

DIVISION COURTS ACT

FOR

UPPER CANADA,

WITH AN

ANALYTICAL INDEX,

BY HIS HONOUR

JAMES ROBERT GOWAN,

JUDGE OF THE COUNTY OF SIMCOE.

TO WHICH ARE ADDED,

REFERENCES TO BRITISH STATUTES CONTAINING ANALOGOUS ENACTMENTS,

AND

RULES AND FORMS,

IN USE IN THE DIVISION COURTS OF THE COUNTY OF SIMCOE,
AS APPROVED OF BY THE JUDGES OF THE SUPERIOR COURTS
OF COMMON LAW.

T O R O N T O :

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ERRATA.—In 27th Rule on page 44, the references to the Forms should be to
Nos. xxxiv, xxxv, xxxvi, xxxvii, and xxxviii, in the Schedule.

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13 & 14 VICTORIA, CHAP. 53.

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SOME REFERENCES

TO

CLAUSES IN BRITISH STATUTES,

From which certain Sections in the Division Court Act, 13 & 14 Victoria, Chapter 53, appear to have been taken—or which contain Analogous Enactments.

References to the Sects. in 13 & 14 Vic. c. 53.	The References are to the British Act, 9 and 10 Vict., ch. 95, except otherwise noticed.	References to the Sects. in 13 & 14 Vic. c. 53.	The References are to the British Act, 9 and 10 Vict. ch. 95, except otherwise noticed.
Sec. 2...	See Section 4 and 7.	" 43...	See Section 80.
" 3...	" 50.	" 46...	See Section 82 from which this clause is in part taken.
" 4...	" 2.	" 47...	This clause is more full but appears to be taken from Section 84.
" 7...	" 17.—See also 13 and 14 Vic. ch. 61, Section 3.	" 48...	See Sections 85 and 86 from which this clause is in part taken.
" 8...	" 20.—and See also 1 and 2 Vic. ch. 110, Sections 32 and 33.	" 49...	Copied from Section 111.
" 9...	" 31, 24, 25.	" 50...	Copied from Section 92.
" 10...	" 36.	" 51...	Copied from Section 93.
" 12...	" 40.	" 53...	See Sections 93, 94 and 100.
" 13...	" 27 and as to duty of Bailiff, See Section 33.	" 54...	See 13 and 14 Vic. ch. 61, Section 8.
" 14...	Taken from the 37th Section.	" 60...	See Section 106, an analogous enactment and defects in this clause will be manifest by a comparison therewith.
" 15...	See Sections 41 and 42.	" 62...	See Section 128.
" 22...	See Section 36.	" 75...	The 113th Section is a similar enactment.
" 23...	See Sections 53 and 63.—and See also 49 Geo. 3, ch. 103—47 Geo. 3, ch. 79, (2d Sess.) Sec. 20—6 and 7 Wm. 4, ch. 75—(Irish Act) Sec. 1, and See the Act "For the more easy recovery of Small Debts in Scotland"—(20th May, 1823,) Section 1—and 4 and 5 Vic. ch. 173, Section 23.	" 76...	Section 116 is a similar enactment.
" 24...	See Section 59, in object similar to this clause.	" 77...	Taken from the 117th Section, but the offence there is the "wilfully and corruptly" exacting, &c.
" 25...	See Sections 90, 128.—and See 36 Geo. 3, ch. 25, Section 11, (Irish Act.)	" 78...	See Section 129.
" 26...	Taken from the 63rd Section.—The additional matter in our Statute was probably intended as an improvement on the English Act.	" 80...	Copied, and nearly <i>verbatim</i> , from Section 60.
" 27...	Taken from the 64th Section.—That Section is however more full than this clause.	" 81...	Taken from Section 83, but greatly modified.
" 28...	See Section 67.	" 82...	Taken from Section 87.
" 29...	Taken from the 68th Section, but this clause is more full in reference to the principle established.—See also 4 and 5 Vic. ch. 173, Section 27.—and See 6 and 7 Wm. 4, ch. 75, Section 56. (Irish Act.)	" 83...	In part taken from Section 86—See also Section 79.
" 30...	See Section 69—An analogous enactment, but there is a marked distinction between that clause and this—See also Section 68.	" 84...	Taken from Section 89—See also Section 79.
" 31...	See (Irish Act) 2 Geo. 1, ch. 11, Section 3.	" 85...	See Section 90.
" 32...	See Section 70, which is an analogous enactment.	" 86...	Taken from Section 57.
" 33...	Taken from Section 71.	" 87, 88...	Copied from Section 81, 62.
" 34...	See Sections 72 and 73.	" 89...	Copied, and nearly <i>verbatim</i> , from Section 96—See also 1 and 2 Vic. ch. 110, Section 12.
" 37...	See Section 72—which requires a like number of Jurors and an unanimous verdict.—but the oath is "to give their verdict according to the evidence"—See also Section 73.	" 90...	This clause is copied in part from Section 97—See also 1 and 2 Vic. ch. 110, Section 12.
" 41...	See Sections 74 and 79—by the English Act the right to appear by agent is subject to special regulation.	" 91...	Taken from Section 93.
" 43...	The 74th Section is similar to this clause, but the demand by way of set off is not named.	" 92...	Copied from Section 99.
" 43...	This clause declares that the Defendant may avail himself of certain defences on certain conditions.—Section 76 of the English Act is similar in bearing, but aims at prescribing terms, preliminary to such defence.	" 93...	Copied <i>verbatim</i> from Section 100.
Sec. 44...	See Section 78—power to frame rules is thereby vested in five of the Judges of the Superior Courts, irrespective of the County Court Judges.	" 94...	Copied from Section 101, and nearly word for word.
		" 95...	Copied and nearly <i>verbatim</i> , from Section 102.
		" 96...	Taken from Section 103—it is noticeable that the words—"goods and chattels" in the English Act after the word "Defendant," near the last of the clause are not in this clause of our Act.
		" 97...	Taken from Section 104.
		" 98...	Copied <i>verbatim</i> from Section 105.
		" 99...	Taken from Section 110.
		" 100...	Taken from Section 114.
		" 101...	Taken from Section 115.
		" 102...	Taken from Section 118—See also 4 and 5 Vic. ch. 173, Sections 71 and 72—See also our own Interpleader Act.
		" 103...	Copied from Section 133.
		" 104...	Copied from Section 134.
		" 105...	Copied from Section 125.
		" 106...	Copied from Section 126.
		" 107...	Copied from Section 135, but our Act allows the plea of General Issue, &c.
		" 108...	Copied <i>verbatim</i> from Section 130, except as to amount of damages.
		" 109...	See Section 56.
		" 112...	See Sections 4 and 7.

DIVISION COURTS ACT.

ACT 13 & 14 VIC. CAP. 53.

An Act to amend and consolidate the several Acts now in force, regulating the Practice of Division Courts in Upper Canada, and to extend the jurisdiction thereof.

[Passed 10th August, 1850.]

WHEREAS it is expedient to consolidate and reduce into one Act the several laws now in force regulating the system and practice of certain Courts in Upper Canada established for the recovery of Small Debts, and to make other provisions therefor: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Act passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to repeal the laws now in force in that part of this Province formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor*,—and the Act passed in the eighth year of Her Majesty's Reign, and intituled, *An Act to amend an Act passed in the fourth and fifth years of the Reign of Her Majesty, intituled, 'An Act to repeal the laws now in force in that part of this Province formerly Upper Canada, for the recovery of Small Debts, and to make other provisions therefor'*,—and the Act passed in the twelfth year of the Reign of Her Majesty, intituled, *An Act to authorize attachments against personal property for sums of ten pounds and under in certain cases in Upper Canada*, shall be and the same are hereby repealed, upon, from and after the day upon which this Act shall come into force.

II. Provided always, and be it enacted, That the several Division Courts now established and in existence in each County of Upper Canada, and the limits and extent of the same respectively, shall be and remain as they are now, until altered as hereinafter mentioned: and provided also, that all proceedings had under any Act hereby repealed, shall remain good and valid, and all suits, actions or proceedings commenced under any such Act, shall be continued and completed under this Act as if commenced under the same.

III. And be it enacted, That the number of the said Courts in each County or union of Counties, shall at no time be less than three, nor more than twelve, and that there shall be one Division Court held in each City and County Town, and that a Court shall be holden under this Act once in every two months in such Division, or oftener, in the discretion of the Judge thereof, and that it shall and may be lawful for the Judge of the said Court to affix and appoint the times and the places within such Divisions when and at which such Courts shall be holden, and in like manner from time to time to alter the same.

IV. And be it enacted, That it shall and may be lawful for the Justices of the Peace in each County now or hereafter to be erected in

Preamble.

Act 4 and 5 Vict.
c. 31; and 8 Vict.
c. 37, and 12 Vict.
c. 60, repealed.

Division Courts,
&c., now exist-
ing, to remain
until altered.

Number of Divi-
sion Courts, and
time of holding
them, how fixed.

Justices of the
Peace may alter
Divisions.

Upper Canada, in General Quarter Sessions assembled, to declare and appoint the number, limits and extent of every such Division, within their respective Counties, subject to the restrictions in this Act contained; and such Justices may from time to time alter the number, limits and extent of such Divisions: Provided always, that a less number of Justices shall have no power to rescind or alter any Resolution or Order made by a greater number at any previous Session.

Proviso.

Divisions, &c., to be entered in a book to be kept by the Clerk of the Peace.

V. And be it enacted, That the Divisions of each County so declared and appointed, and the times and places of holding such Courts, and all alterations that may be from time to time made therein as aforesaid, shall be entered and recorded by the Clerk of the Peace, in a book to be by him kept for that purpose, and that it shall be his duty to transmit to the Governor of this Province, a copy of every such entry and record as soon as the same shall have been made.

Justices of the Peace to number the Divisions.

VI. And be it enacted, That the Justices so assembled as aforesaid, shall be required to number the said Divisions, beginning at number one; and that the Court to be held in each Division shall be known by the name and style of the—The First (or other, as the case may be,) Division Court for the County of

Judges of County Courts to preside.

VII. And be it enacted, That the Judges of the County Courts of the several Counties in Upper Canada, shall preside over the Division Courts within their respective Counties, and no such Judge, shall, during the continuance of his appointment, be capable of being elected or of sitting as a Member of the Legislature of this Province, or of practising as an Attorney, a Notary Public, or Solicitor or Counsel, in any of Her Majesty's Courts of Law or Equity.

Judge, in case of illness, &c., may appoint a deputy properly qualified.

VIII. And be it enacted, That in case of the illness or unavoidable absence of the Judge of any such County Court, it shall be lawful for the Judge of any County Court for any other County to hold the Court and to act in the place of the Judge so absent and with the same powers, or for such Judge to appoint some Barrister duly admitted as such to act as his deputy; and every person so appointed shall during the time for which he shall be so appointed, have all the powers and privileges, and be subject to all the duties vested in or imposed by this Act or by Law on the Judge by whom he shall have been so appointed as Judge of the Division Court, and notice of every such appointment shall be forthwith sent by the Judge or Deputy Judge to the Governor of this Province, and such notice shall specify the name, residence and profession of the Deputy Judge, and the cause of his appointment; and no such appointment shall be continued for more than one calendar month without a renewal of the like notice, and it shall be lawful for the Governor to annul any such appointment of which he shall disapprove: Provided always, that whenever from illness of the Judge or Deputy Judge, or from any casualty, it may happen that he shall not arrive in time, or shall not be able to open any Court to be held under this Act on the day appointed for that purpose, it shall and may be lawful for the Clerk or Deputy Clerk of such Court, after the hour of eight o'clock in the afternoon of such day, to adjourn by proclamation any Court which shall be appointed to be opened on that day to an earlier hour on the following day, not being Sunday or a legal holiday, to be by him named, and so from day to day, adjourning over any Sunday or holiday, until the Judge or Deputy Judge shall arrive to open the same, or until he shall receive other direction from such Judge or Deputy Judge.

Proviso: when the Judge shall not arrive in time to open the Court on any day.

Clerk and Bailiffs to be appointed.

IX. And be it enacted, That for every Court holden under the authority of this Act, there shall be a Clerk and one or more Bailiffs; and the Judge of the County Court shall from time to time appoint, and at his pleasure remove, the Clerks and Bailiffs of the Courts holden by

him: Provided always, that no person other than a subject of Her Majesty shall be so appointed: And provided also, that no practising Barrister, Attorney or Solicitor shall hereafter be appointed to the Office of Clerk of any Division Court.

X. And be it enacted, That it shall be lawful for the Clerk of any such Division Court (with the approval of the Judge thereof,) to appoint from time to time, a Deputy to act for him in the office of Clerk of the Court at any time when he shall be prevented by illness or other unavoidable accident from acting in such office, and to remove such Deputy at his pleasure; and such Deputy, during the time for which he shall be so appointed, shall have the like powers and privileges, and be subject to the like duties as if he were the Clerk of the Court for the time being; and the Clerk of the Court and his sureties shall be jointly and severally responsible for all the acts and omissions of his Deputy.

Clerk may appoint a deputy in cases of illness, &c.

XI. And be it enacted, That the Clerk or Deputy Clerk shall have full power and authority to administer oaths and take affidavits of service of process, notices or other papers, and also of the execution of Cognovits, and all other oaths required or authorized by this Act, in all suits, actions and proceedings, commenced in his own or in any other Division Court in Upper Canada.

Clerk, &c., may administer oaths of service of process, &c.

XII. And be it enacted, That the Treasurer of every County shall be the Receiver General of fees of the several Division Courts within his County; and every such Treasurer shall be paid a per centage of four pounds, on every hundred pounds of the gross produce of the fees of the Courts of which he is Receiver General; and every Judge shall be paid by a certain salary, the salary of a Judge being in no case more than Five Hundred Pounds, nor less than Two Hundred and Fifty Pounds; and the Clerk and the Bailiffs of the Court, shall be paid by fees hereby allowed to them; and the Governor in Council shall fix the remuneration to be paid to the Judges, having due regard to the population and other circumstances of the several Counties and Divisions, and the remuneration to be paid to the Judges may within the limits aforesaid be increased, or diminished by the said authority: Provided always, that the salaries of the said Judges, as at present established, shall remain the same, unless otherwise altered by law, or unless vacancies shall occur.

Treasurer to receive all fees: his per centage.

Judge's salary.

Clerk and Bailiffs how paid.

Judges' salaries how fixed.

Proviso.

XIII. And be it enacted, That the Clerk of each Division Court shall issue all summonses and furnish copies thereof, with the notice thereon, in the form given in the Schedule to this Act, annexed marked B, and particulars of the Plaintiff's claim or demand and copy thereof, and of the defendant's sett-off, which copy of demand, particulars or sett-off, are to be furnished to the Clerk by the Plaintiff and Defendant, respectively, and also shall issue all warrants, precepts, and writs of execution, tax costs, subject to the revision of the Judge, and register all orders and judgments of the Court, and keep an account of all Court fees and fines payable or paid into Court, and of all suitor's money paid into and out of Court, and shall enter an account of all such fees, fines and moneys in a book to be kept by him for that purpose, which book shall at all times be accessible to the Judge of the said Division Court whose duty it shall be to inspect and examine the same, quarterly, or oftener, and to compare the accounts hereinafter mentioned with the said book required to be kept by the Clerk, and such Judge shall certify on each such account, that he has examined the same, and believes it to be correct, or if he does not believe it to be correct, he shall state his objections thereto, and the Clerk shall thereupon forward the account with such certificate to the Treasurer, and such book shall also be open to all persons desirous of searching the same, and shall in addition from time

Certain duties assigned to the Clerks.

Summonses, &c. Accounts of all fees.

Books to be open to public.

Proceedings in case of death or removal of Clerk.

Proviso.

Penalty on parties who shall wrongfully hold papers, &c.

Duty of Bailiffs as Peace Officers.

Fees to be those in the Schedule A, or in any Schedule of reduced fees.

How paid.

Proviso: as to Bailiff neglecting to return process.

to time, at such times as shall be directed and appointed by the Governor, submit his said accounts to be audited or settled by the Treasurer of his County; and all papers, processes, proceedings, accounts, moneys, books and all matters whatsoever in the possession of the said Clerk by virtue of or appertaining to his office, shall upon his resignation, removal or death, immediately become the property of the Treasurer of the County in which the Division for which he was Clerk is situate, who shall hold the same for the benefit of the public until the appointment of another Clerk to whom the same shall be respectively delivered over by the said Treasurer: Provided always, that it shall not be lawful for the said Treasurer so to deliver over the same until such Clerk and his sureties shall have executed the covenant hereinafter mentioned:

And it is hereby declared, that any person or persons whosoever wrongfully holding or getting possession of such papers, processes, proceedings, accounts, moneys, books and matters aforesaid, or any of them, shall be guilty of a misdemeanor, and that upon the declaration in writing of the Judge presiding over the Division Court for the time being in which such wrongful holding or getting possession as aforesaid shall take place, that any person has obtained or holds such wrongful possession thereof as aforesaid, and upon the order of a Judge of any of Her Majesty's Superior Courts of Law in Upper Canada, founded thereon, such person may be arrested by the Sheriff of any County in which such person shall be found, and be by him committed to the Common Gaol of his County, there to remain without bail or mainprize until one of such Superior Courts or a Judge thereof shall be satisfied that such person has not and never had nor held any such matters or moneys he may have been charged with wrongfully holding or obtaining, or that he has fully accounted for the same or delivered up the same to such Treasurer, or until he shall be otherwise discharged by due course of Law, and the Bailiffs of the Court shall serve all summonses, and execute all such orders, warrants, precepts and writs; and each of such Bailiffs shall also exercise the power and authority of a Constable and Peace Officer during the actual holding of the Division Court of which he is a Bailiff, with full power to prevent all breaches of the peace, riots or disturbances within the Court Room or building wherever the said Court is held, or in the public streets, squares, or other places within the hearing of the said Court, and to arrest, with or without any warrant, all parties engaged therein or offending against the meaning of this clause, and to bring such offenders before the nearest Justice of the Peace, or any other Judicial Officer having power to investigate the matter or adjudicate thereupon.

XIV. And be it enacted, That there shall be payable on every proceeding in the Division Courts holden in pursuance of this Act, and to the Clerks and Bailiffs of the Courts, such fees as are set down in the Schedule to this Act annexed marked A. or which shall be set down in any Schedule of reduced fees, under the power hereinafter given for that purpose, and none other; and a table of such fees shall be hung up in some conspicuous place in the offices of the several Clerks of Division Courts; and the fees upon every proceeding shall be paid in the first instance by the Plaintiff, or Defendant, on or before such proceeding, and the Bailiff's fees upon executions shall be paid to the Clerk of the Court, at the time of the issue of the warrant of execution, and shall be paid over by such Clerk to the Bailiff, upon the return of the warrant of execution, and not before: Provided always, that if the Bailiff shall neglect to make a return within the time required by law, of any summons, process or execution, he shall, for each such neglect, forfeit his fees on such summons, process or execution, and all fees so forfeited shall be held to have been received by the Clerk of the Court,

and shall be accounted for and paid over by him to the Treasurer of the County, to form part of the General Fee Fund, in like manner as other moneys received by him, and he shall keep a special account of all moneys so forfeited by Bailiffs.

XV. And be it enacted, That the Clerk of each Division Court shall, from time to time, and as often as he shall be required so to do by the Treasurer of his County, and at least once in every three months, deliver to him a full account in writing of the fees received in such Court, under the authority of this Act, or of any Act hereby repealed, and a like account of all fines levied by the Court, (accounting for and deducting the reasonable expenses of levying the same, and any allowance which the Judge may have made out of any such fine, in pursuance of the power hereinafter given,) and when required by the Judge shall from time to time furnish him a like account of the moneys paid into and received out of the Court, by the Defendants and Plaintiffs in the said Court, under any orders and decrees of the Court, or under process of the Court, and of the balance then remaining in Court, belonging to the Plaintiffs or Defendants in the Court, and the amount of such fees payable to the General Fee Fund, from time to time received by such Clerk, shall be paid over from time to time to the Treasurer, (such payment being made, at least, once in every three months,) and shall form part of a fund, to be called the General Fee Fund of the Division Courts, which fund shall be applied towards the payment of the salaries of the Judges of such Courts: Provided always, that each of the accounts to be rendered by the Clerk, as in this section required, shall be verified by such Clerk on oath, before the said Judge or a Justice of the Peace.

Clerks to render certain accounts to the County Treasurers.

And to pay over moneys to the Treasurer.

XVI. And be it enacted, That the Treasurer of every County shall, on or before the first day of July and the first day of January in every year, render to the Inspector General of this Province a true account, in writing, of all moneys received, and of all moneys disbursed by him on account of the Division Courts holden under the authority of this Act, during the period comprised in such account, in such form, and with such particulars as the said Inspector General shall from time to time require; and shall, within ten days after the rendering of every such account pay over the amount of any surplus of such fees to the Receiver General of this Province; and if default shall be made in such payment, the amount due by the said Treasurer shall be deemed a speciality debt to Her Majesty.

Treasurer to account for and pay over moneys to the Receiver General twice every year.

Penalty for default.

XVII. And be it enacted, That in case the amount of fees received in the Division Courts in any County shall not be sufficient to repay the disbursements required on account of such Courts, during the period comprised in the said account, it shall be lawful for the Governor of this Province forthwith to issue his warrant on the Receiver General of this Province, in favour of the County Treasurer, for the amount which shall be required to make up the deficiency, and the amount of such warrant shall be charged upon the Consolidated Revenue Fund of this Province.

Provision if the fees be insufficient to meet the disbursements.

XVIII. And be it enacted, That the accounts to be kept by the several Treasurers on account of the said Courts, shall be deemed public accounts, and shall be inquired into and audited, and shall be within any provision of law now or hereafter to be in force for auditing public accounts.

Treasurers' accounts to be public accounts.

XIX. And be it enacted, That if any person having resigned or having been removed from the office of Treasurer, or of Clerk of a Division Court, shall neglect, after twenty-one days' notice to such person, to account for and pay to the Treasurer of the County for the time being, or to such person as he shall appoint to receive the same, all such sums

Proceedings in case any Treasurer or Clerk resigning or removed, shall refuse to pay over

moneys in his hands.

as shall remain in his hands of moneys received under the authority of this Act, it shall be lawful for such Treasurer, for the time being, in addition to any other proceeding in this Act contained, in his own proper name only, or by his name and description of office, to sue for and recover the same from such person and his sureties with costs of suit, in any Court of Record in this Province having competent jurisdiction, by action of debt; in which action it shall be sufficient for such Treasurer to declare as for money had and received to the use of such Treasurer for the purposes of this Act; and the Court in which the action shall be brought, may, at the instance of either of the parties, refer the account in dispute in a summary manner, to be audited by any officer of the Court or other fit person, who shall have power to examine all parties interested in the subject matter upon oath; and upon the report of the referee, (unless either of the parties shall shew good cause to the contrary,) the Court may make a rule either for the payment of such sum as upon the report shall appear to be due, or for staying the proceedings in the action, and upon such terms and conditions as to the Court shall appear reasonable; or the Court may order judgment to be entered up as by confession for such sum as upon the report shall appear to be due.

Proceedings in case of the death of any Treasurer or Clerk having moneys in his hands.

XX. And be it enacted, That in case of the death of any person during the time that he shall be holding the office of County Treasurer or of Clerk of any Division Court, or after he shall have resigned or be removed from such office, the Treasurer for the time being, may, in his own proper name, or by his name and description of office, sue and recover from the executors or administrators of such person deceased, and his sureties, all such sums as shall have been remaining in his hands of money received under the authority of this Act, by an action of debt in any Court of Record in this Province having competent jurisdiction, in which it shall be competent for the plaintiff to declare that the deceased was indebted to the plaintiff for money had and received to his use for the purposes of this Act; whereby an action hath accrued to the plaintiff, to demand and have the same from such executors or administrators; and a like action may be brought against any executors or administrators of executors or administrators; and in all such actions the defendant or defendants may plead in like manner, and avail themselves of the like matters of defence, as in any action founded on simple contract of the original testator or intestate, and the Court may refer the account in dispute to be audited by any officer or person, and may proceed upon the report of such referee in like manner as in the case mentioned in the next preceding section.

Plaintiff acting as Treasurer to be *prima facie* evidence of his being so.

XXI. And be enacted, That in all actions to be brought, as well as in all proceedings whatsoever to be instituted or carried on by any Treasurer by virtue of this Act, proof of his acting in the execution of the office of Treasurer shall be sufficient evidence of his holding such office, unless the contrary shall be shown in evidence by the defendants in such actions or the parties against whom such proceedings shall be instituted or carried on.

Treasurers, Clerks and Bailiffs to give security.

XXII. And be it enacted, That the Treasurer of every County shall give security for such sum, and with so many sureties, and in such manner and form as the Governor of this Province shall see reason to direct, for the due performance of his office, and for the due payment of all moneys received by him under any provision of this Act, and that every Clerk and Bailiff whose duty it shall be to receive moneys or who shall be appointed under this Act, shall give security for such sum, and with so many sureties as the Judge for the Division Court for which they act shall see reason to direct, by entering into a covenant under their hand and seal, joint and several, according to the form given in the Schedule to this Act annexed marked C, or in words to the same

Form of covenant.

effect, which covenant shall be available to, and may be sued upon, by any person suffering damages by the default, breach of duty, or misconduct of such Clerks and Bailiffs respectively, in any Court of competent jurisdiction in Upper Canada; and every such Clerk or Bailiff appointed before this Act shall come into effect, shall, immediately after it shall come into effect, and before he shall perform any duty after that time, give security in the manner hereby required, but his so doing shall not in any wise impair or affect any bond or recognizance or covenant theretofore entered into by him, as such Clerk or Bailiff, but the same shall remain in full force as against him and his sureties, as regards any thing done or omitted to be done by him in breach of the conditions thereof, before this Act shall come into effect: Provided always, that such covenants shall not be accepted until the sureties therein mentioned shall have been approved of under the hand of such Judge, and declared sufficient for the sums for which they shall have respectively become bound to such covenants, and which said covenants, together with such approval, shall, before any such Clerk or Bailiff shall enter upon the duties of his office under this Act, be filed in the office of the Clerk of the Peace in the County in which the Division Court in respect of which such covenants were given is situate, for which filing and granting a certificate thereof the said Clerk of the Peace shall be entitled to demand and receive from such Clerk or Bailiff the sum of five shillings, and no more; and if any person who shall have become surety in any such covenant shall die, become resident out of Upper Canada, or insolvent, such Clerk and Bailiff shall, within one month after being notified by such Judge (whose duty it shall be to notify the same) of such death, departure or insolvency, give anew the like security, and in the same manner as hereinbefore provided, or forfeit his said office of Clerk or Bailiff under this Act: Provided always, that nothing herein contained shall extend or be construed to extend to discharge or exonerate all or any of the parties to such former covenants from their liability on account of any matter or thing which shall have been done or omitted before the renewal of the covenant as herein directed: And provided also, that a copy of such covenant, certified by the Clerk of the Peace, shall be received in all Courts as sufficient evidence of the due execution and of the contents thereof without any proof whatever; And provided that such sureties shall be freeholders and resident within the County in which the Court is held.

Clerks or Bailiffs heretofore appointed.

proviso : sureties must be approved by Judge.

If sureties die or become insolvent, &c.

Proviso.

Proviso.

Proviso.

Jurisdiction of Division Courts.

In torts.

Proceedings to be summary.

As to certain contracts.

Proviso.

XXIII. And be it enacted, That the the Judge of every such Division Court shall have power, jurisdiction and authority to hold plea of all claims and demands whatsoever for or against any person or persons, bodies corporate or otherwise, of debt, account, or breach of contract, or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed shall not exceed the sum of twenty-five pounds, and in all torts to personal chattels, to and including the amount of ten pounds, and the Judge of the said Court shall hear and determine the same in a summary way; and every such Judge shall have power to make such orders, judgments and decrees thereupon as shall appear to him to be just and agreeable to equity and good conscience; and that upon any contract for the payment of a sum certain in labour or in any kind of goods or commodities, or in any manner otherwise than in money, that is to say, upon any contract for the delivery of goods or commodities, or the doing of work or labour for value received, or for or upon a past or executed consideration, it shall be lawful for the Judge, after the day has passed on which the goods or commodities ought to have been delivered, or the labour or other things performed, to give judgment for the amount in money as if the contract had been so originally expressed: Provided always, that no action shall be brought or tried in any such Division Court for any gambling debt,

Proviso. nor for any spirituous or malt liquors drunk in a tavern or ale-house, nor for any cause involving the right or title to real estate or involving any right to any custom or toll: Provided also, that nothing contained in this Act shall be construed to constitute and create the said Division Courts, Courts of Record.

Mode of commencing suits in Division Courts. XXIV. And be it enacted, That the Plaintiff in any suit brought in any Division Court, shall enter a copy, and if necessary, copies of his account or demand in writing, in detail, and the particulars of his demand in any case of tort or trespass, which shall be numbered according to the order in which it shall be entered, and thereupon a summons, bearing the number of the account or demand on the margin thereof, shall be issued which shall be in substance in the form of the Schedule to this Act annexed, marked B, according to the nature of the demand

Service of summons, notice, &c.

or claim for tort or trespass; and a copy of such summons, to which shall be attached a copy of the Plaintiff's account, or of the particulars of his demand, as the case may be, and the notice in the said Schedule of such demand, or account, or claim for each tort or trespass, shall be served on the Defendant ten days at least before the day on which the Division Court shall be holden at which the cause shall be tried; and delivery of such copies of summons and account or demand to the Defendant, or delivery thereof to his wife or servant, or any grown person being an inmate of his dwelling-house or usual place of abode, trading or dealing, shall be deemed a good service of such summons, account or demand; Provided always, that personal service of such summons on the debtor shall be necessary in all cases where the amount or damages sued for exceed the sum of forty shilling.

On whom to be made.

Proviso.

At what Division Court any suit may be brought.

XXV. And be it enacted, That all suits brought under this Act shall be tried at the Court holden for the Division wherein the Defendant, or where there shall be more than one Defendant, wherein any one of the Defendants shall dwell or carry on his business at the time of entering the account or demand, or at the Court holden for the Division within which the debt was contracted, or the tort or trespass committed, unless otherwise specially ordered by the Judge.

Plaintiff may not divide his claim, but may abandon excess.

XXVI. And be it enacted, That it shall not be lawful for any Plaintiff to divide any cause of action into two or more suits, for the purpose of bringing the same within the jurisdiction of a Division Court, but any Plaintiff having a cause of action above Twenty-five Pounds, in which a suit might be brought under this Act, if the same were not above that sum, whenever he shall claim or demand only the balance, or sum of Twenty-five Pounds, may, on proving his case, recover to that amount only: Provided always, that no unsettled account to a greater amount than Fifty Pounds shall be sued for in any Division Court; and the judgment of the Court upon such suit shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment shall be made accordingly.

Proviso: as to unsettled accounts.

Minors may sue for wages.

XXVII. And be it enacted, That it shall be lawful for any one under the age of twenty-one years to prosecute any suit in any Division Court under this Act, for any sum of money not exceeding Twenty-five Pounds which may be due to him or her for wages, in the same manner as if he or she were of full age.

No person exempt by privilege.

XXVIII. And be it enacted, That no privilege of any description whatsoever shall be allowed to any person to exempt him from suing and being sued in the said Division Courts upon any cause of action within the jurisdiction of the said Courts.

Debts due by more than one person jointly, may be recovered

XXIX. And be it enacted, That where any Plaintiff shall have any debt or demand recoverable under this Act, against two or more persons, partners in trade, or otherwise jointly answerable, but residing in dif-

ferent Divisions, or one or more of whom cannot be found, it shall be sufficient, if any one or more of such persons be served with the process as hereinbefore directed, and the judgment may be obtained, and execution issued against such person, notwithstanding others jointly liable may not have been served or sued, reserving always to the person against whom execution may issue, any right which he may have to demand contribution from any other person, jointly liable with him: Provided always, that whenever judgment is obtained against any person, being partner of a firm, and the Judge shall certify that the demand proved was strictly a partnership transaction, the Bailiff may seize and sell the property of such firm, as well as that of the Defendant or Defendants, who has or have been served, to satisfy such judgment, together with all lawful costs and charges thereon.

from one, saving his recourse.

Proviso: as to cases against partnerships.

XXX. And be it enacted, That the Judge of the County Court, or his Deputy, as aforesaid, shall be the sole Judge to determine all actions brought in the said Division Courts, in the summary manner authorized by this Act, and all matters and questions of fact relating thereto unless the amount claimed shall in cases of tort or trespass exceed Two Pounds Ten Shillings, in other cases where the same shall exceed Five Pounds and where either of the parties shall require a jury to be summoned as hereafter mentioned.

Judge to decide alone up to a certain amount.

XXXI. And be it enacted, That in any suit brought in any Division Court for any debt or demand not exceeding the sum of Five Pounds, the Judge, in his discretion, may receive the affidavit of any party or witness in the said suit, resident without the jurisdiction of the Judge of such Court, as testimony in the cause, if such affidavit shall be made and sworn to before a Judge of a Division Court, or a Commissioner for taking affidavits in any of the Superior Courts in Upper Canada: Provided that the Judge, in his discretion, before he shall be required to pronounce judgment, may require any such witness, or any party in a cause, to answer any interrogatories that may be filed in the said cause, which answers may in like manner be sworn to before any Judge or Commissioner.

In suits not exceeding £5, Judge may receive affidavits of parties without his jurisdiction.

Proviso.

XXXII. And be it enacted, That in all actions of tort or trespass, where the sum of money sought to be recovered shall exceed Two Pounds Ten Shillings, and in all other cases where such sum shall exceed Five Pounds, it shall be lawful for the plaintiff or defendant to require a Jury to be summoned to try the said action, and in any such case a Jury shall be summoned according to the provisions hereinafter contained to try such action: Provided always, that if the plaintiff require a Jury to be summoned, he shall give notice in writing to the Clerk of the Court at the time when he shall enter his account, demand or claim as aforesaid, and if the defendant shall require a Jury to be summoned, he shall give to the said Clerk, or leave at the office of the said Clerk, the like notice in writing within five days after the day of service of the summons on the said defendant.

Jury allowed in cases over a certain amount.

Proviso: notice to be given to the Clerk.

XXXIII. And be it enacted, That every party plaintiff or defendant, requiring any jury to be summoned, shall, at the time of giving the notice hereby required and before he shall be entitled to have such jury summoned, pay to the Clerk of the said Court such sum of money as is set down in the Schedule of Fees for the time being, for or towards the payment of the expenses of the said jury.

Sum to be paid on demanding a jury.

XXXIV. And be it enacted, That the causes which are to be heard by the Judge alone, shall be set down for hearing in a separate list from the list of causes which are to be tried by a jury, which two lists shall be severally called "The Judge's List" and "The Jury List," and the causes shall be set down in such lists in the order in which they were

"Judge's List" and "Jury List" to be kept.

DIVISION COURTS ACT.

entered in the first instance with the Clerk of the Division Court; and "The Jury List" shall be first disposed of, and then "The Judge's List;" except when the Judge shall see sufficient cause for proceeding differently.

Who shall be Jurors at Division Courts.

What Jurors shall serve for each Division.

Collectors to furnish Clerks with lists of persons liable to serve.

Mode of summoning Jurors.

Proviso: as to right of challenge.

Penalty on Jurors summoned and not attending.

How enforced.

Proviso: such service not to exempt from service in certain Courts.

Payment of Jurors.

Five Jurors to be sworn.

Verdict must be unanimous.

Case where the Jury cannot agree, provided for.

XXXV. And be it enacted, That all male persons being subjects of Her Majesty by birth or naturalization above the age of twenty-one years, and not above the age of sixty years assessed upon the Collector's Roll and resident in the several divisions respectively, shall be jurors for the Division Courts in such Divisions, and the jurors to be summoned to serve at any Division Court shall be taken from the Collector's Rolls of the preceding year, for the Townships and places wholly or partly within the Division, and shall be summoned in rotation beginning with the first of such persons on such Roll; and if there be more than one such Township or place within the Division beginning with the Roll for that within which the Court is held, and then proceeding to that one of the other Rolls which shall contain the greatest number of such persons names, and so on until all the Rolls be gone through; after which, if necessary, they may be again gone through wholly or partly in the same order, and so on to *toties quoties*; and for the purposes of this section, it shall be the duty of the Collector for each place wholly or partly within any division, to furnish the Clerk of the Division Court thereof with correct lists of the names of all persons liable to serve as jurors at such Court in the order in which they stand upon the Rolls, and the Clerk of each Division Court shall cause not less than fifteen of the persons liable to serve as aforesaid to be summoned at each Session of the Court, (giving them at least three days' notice,) to attend the Court at the time and place to be mentioned in the summons serving such notice personally, or leaving it with a grown-up person at the residence of the juror; Provided always, that either of the parties to any such cause shall be entitled to his lawful challenge against any of the said jury in like manner as he would in any other Court; and any jurymen who, after being duly summoned for that purpose as aforesaid, shall wilfully neglect or refuse to attend the Court in obedience to such summons shall be liable to a fine not exceeding twenty shillings, to be set on him by the Judge, which fine shall be levied and collected with costs, as other fines are hereinafter directed to be levied and collected, and shall form part of the general fee fund; and such fine may be levied by the same process as any debt or judgment recovered in the said Court: Provided always, that service as juror at any Division Court shall not exempt such juror from serving as juror in any of the Superior Courts of civil or criminal jurisdiction or in any County Court, under any law now in force or to be passed during this present Session of Parliament respecting jurors.

XXXVI. And be it enacted, That each juror shall receive from the Clerk of the Division Court, out of the moneys to be deposited with him for that purpose, the sum of six pence, for every cause in which such Juror shall be sworn.

XXXVII. And be it enacted, That from time to time, as occasion shall require, five Jurors shall be empannelled and sworn to do justice between the parties whose cause they shall be required to try, according to the best of their skill and ability, and to give a true verdict according to the evidence, and each cause shall be decided by the unanimous verdict of any such Jury, and no other finding shall be received.

XXXVIII. And be it enacted, That whenever the Judge holding any Division Court shall be satisfied that a Jury sworn in any cause before him cannot agree upon their verdict after having been out a reasonable time, he may discharge them, and shall then adjourn the cause until

the next Court and order the Clerk to summon a new Jury for the next sitting of the Court to be held in that Division, unless the parties shall have consented that the Judge may render judgment on the evidence already taken before him, in which case he is hereby authorized to give judgment accordingly.

XXXIX. And be it enacted, That every decision of the Judge, in any case heard before him, shall be openly pronounced in Court as soon as may be after the hearing thereof, save and except that in any case where the Judge may not be prepared to pronounce a decision instant, he may postpone judgment and name a subsequent day and hour for the delivery thereof at the Clerk's Office in writing; and at such day and hour it shall be lawful for the Clerk to read the judgment to the parties or their agents if present, and if not, then to enter the said judgment in their absence, and such judgment shall be as effectual as if rendered in Court at the trial.

How judgment shall be pronounced.
Exception.

XL. And be it enacted, That every summons and writ of execution issued by a Clerk of any Division Court shall be entirely filled up, and shall have no blank either in the date or otherwise at the time of its delivery to a Bailiff or any other person, to be executed.

No writ of summons or execution to have any blank.

XLI. And be it enacted, That on the day named in the summons, the Plaintiff shall appear in the Division Court in person, or by some person in his behalf, to answer; and on answer being made in Court, the Judge shall proceed in a summary way to try the cause and give judgment without further pleading or formal joinder of issue.

Proceedings on day of appearance.

XLII. And be it enacted, That no evidence shall be given by the Plaintiff or Defendant on the trial of any such cause as aforesaid, of any cause of action, claim or sett-off, except such as shall be stated and contained in the demand, claim, account or sett-off, entered as hereinbefore directed.

Cause of action to be proved as stated.

XLIII. And be it enacted, That any defendant may avail himself of the law of sett-off and the Statute of Limitations, and of any other relief or discharge under any statute or law in Upper Canada; and if the Defendant's demand exceed that of the Plaintiff, the Court may non-suit the Plaintiff; or if the Defendant's demand, after remitting any portion of it he may please, do not exceed Twenty-five Pounds, the Court may give judgment for the Defendant for the balance found in his favour: Provided always, that no statutory defence shall be admitted, unless notice thereof in writing and a copy of such debt or demand by way of sett-off, shall have been delivered to the Plaintiff, or left at his usual place of abode, if within the Division, or if living without the Division, to the Clerk of the said Court, at least six days before the trial or hearing: And provided also, that whenever any judgment shall be given in any case where a sett-off is set up, the judgment of the Court on such sett-off, shall be a full discharge, as well of the amount allowed to be sett-off as the amount by which such claim of the Defendant exceeded Twenty-five Pounds, and such judgment shall be so entered accordingly.

Defendant may plead sett-off.

Proviso: as to statutory defence.

Proviso.

Judgment on sett-off to be a discharge.

Judge to make rules of practice.

XLIV. And be it enacted, That the Judge of the County Court shall have power from time to time to make general rules for regulating the practice and proceedings of the said Division Courts, and also to frame forms for every proceeding in the said Courts for which he shall think it necessary that a form be provided, and from time to time to alter any such form, and also to alter all or any of the forms given in the Schedule of this Act: Provided always, that such rules and forms so made, framed or altered, shall not be brought into use until the same shall have been submitted to and approved by the Chief Justice and Judges of the Court of Queen's Bench or Court of Common Pleas, for that part of this Province called Upper Canada, or any two of them: Provided

Proviso: rules to be approved.

Proviso: as to existing rules.

Proceedings if defendant shall make default.

Proviso.

Defendant may pay money into Court.

How the money shall be dealt with.

Proviso: if the plaintiff recover no greater sum.

False swearing to be perjury.

Parties may obtain subpoenas for witnesses.

By whom to be served.

Proof of service.

always, that all rules and forms already legally made, approved and in force shall, as far as applicable, remain in force, until it is otherwise ordered.

XLV. And be it enacted, That if on the day named in the summons the Defendant shall not appear as aforesaid, or sufficiently excuse his absence, or shall neglect to answer, the Judge, on proof of due service of the summons and copy of the Plaintiff's account, claim or demand, may proceed to the hearing or trial of the cause on the part of the Plaintiff only, and the order, verdict or judgment thereupon which shall be given, made or rendered after hearing the evidence to be adduced on the part of the Plaintiff, shall be final and absolute, and as valid as if both parties had attended; and in case of the personal service of the summons, and detailed particulars of the Plaintiff's claim, except in actions of tort or trespass, the Judge may, in his discretion, give judgment without further proof: Provided always, that the Judge may make any order for granting any time to the Plaintiff or Defendant to proceed in the prosecution or defence of the suit.

XLVI. And be it enacted, That it shall be lawful for the Defendant in any action brought under the provisions of this Act, at any time not less than six days before the day appointed for the trial thereof, to pay into Court such sum of money as he shall think a full satisfaction for the demand of the Plaintiff, together with the costs incurred by the Plaintiff up to the time of such payment; and notice of such payment shall be forthwith communicated by the Clerk of the said Court to the Plaintiff by post, (on receiving the necessary postage,) or by sending the same to his usual place of abode or business, and the said sum of money shall be paid to the Plaintiff, and all proceedings in the said action shall be stayed, unless the Plaintiff shall, within three days after the receipt of notice of such payment, signify to the Clerk of the said Court his intention to proceed for the remainder of the demand claimed, and in such case the action shall proceed as if it had been brought originally for such remainder only: Provided always, that if the Plaintiff shall recover no further sum in the action than such sum as shall have been paid into Court, under the provision hereinbefore contained, the Plaintiff shall pay to the Defendant all costs, charges and expenses incurred by him in the said action after such payment as aforesaid, and such costs, charges and expenses shall be settled by the Court, and shall be recovered by the Defendant by such ways and means as any sum ordered to be paid by the Court can be recovered.

XLVII. And be it enacted, That every person who in any examination, shall wilfully or corruptly give false evidence, or shall wilfully swear (or affirm, when by law affirmation is allowed,) falsely in any matter where an oath, affirmation, or affidavit in writing is required and allowed in this Act, shall be liable to the penalties of wilful and corrupt perjury.

XLVIII. And be it enacted, That either of the parties to the suit may obtain from the Clerk of any Division Court a summons requiring the attendance of a witness resident within the County or served with the subpoena therein with or without a clause requiring the production of books, papers and writings in his possession or control; and in any such summons any number of names may be inserted, and service of a copy of any such summons by any literate person shall be as valid and effectual as if the same had been served by a Bailiff of the Court in which the suit is pending, and proof of the due service thereof, together with the tender of payment of expenses, may be received by the several Judges of the said Courts by written affidavits sworn before any Judge of a Division Court or before any person authorized by law to take affi-

debits in the Superior Courts in Upper Canada: and every person on whom any such copy of summons shall have been served, either personally or at his or her usual place of abode, and to whom at the same time a tender of payment of his or her expenses shall have been made on such scale of allowance as has been heretofore or shall from time to time be settled by the Judge, and approved of by the Judges of the Court of Queen's Bench or Court of Common Pleas as aforesaid, and who shall refuse or neglect without sufficient cause to appear or to produce any books, papers or writings required by such summons to be produced, and also every person in Court called upon to give evidence, who shall refuse to be sworn or affirm where affirmation is by law allowed and give evidence, shall forfeit any pay such fine not exceeding two pounds, as the Judge shall set on him or her, and shall moreover be liable to imprisonment by verbal or written order of such Judge for any time not exceeding ten days; and such fine shall be levied and collected with costs in the same manner as fines imposed on Jurymen for non-attendance, and the whole or any part of such fine, in the discretion of the Judge, after deducting the costs, shall be applicable towards indemnifying the party injured by such refusal or neglect, and the remainder thereof shall form part of the General Fee Fund before mentioned; Provided always, that either party may obtain from either of the Superior Courts of Common Law for Upper Canada, a subpoena requiring the attendance of a witness residing or served with such subpoena in any part of Upper Canada, at the Division Court, and at the time mentioned in such subpoena, which such witness shall obey, provided the allowance for his expenses shall, at the time of service, be tendered to him according to the scale settled in the said Superior Courts.

Penalty on witnesses not attending;

Or refusing to be sworn, &c.

How levied, &c.

Proviso: as to witnesses out of jurisdiction of Court.

XLIX. And be it enacted, That the Clerk of each Division Court shall cause a note of all summonses, and of all orders, and of all judgments and executions and returns thereto, to be fairly entered from time to time in a book which shall be kept in his office; and the Clerk shall sign his name on every page of such book; and such entries in the said book so signed, or a copy thereof purporting to be signed and certified as a true copy by such Clerk, shall at all times be admitted in all Courts and places whatsoever as evidence of such entry or entries, and of the proceedings referred to by such entry or entries, without any further proof.

Clerk to enter all proceedings.

L. And be it enacted, That the Judge may make orders concerning the time or times, and the proportions in which any sum and costs recovered by judgment of the said Court shall be paid, at the request of the party entitled to the same, may order such sums to be paid into the Court: Provided always, that in any such order for time, reference shall be had to the day on which the summons was served on the Defendant, and issuing of execution shall not be postponed without the consent of the party entitled to the same for a longer period than fifty days from the service of the summons.

Judge may grant delay to defendant.

Proviso.

LI. And be it enacted, That if there be cross-judgments between the parties, execution shall be taken out by the party only who shall have obtained judgment for the larger sum, and for so much only as shall remain after deducting the smaller sum, and satisfaction for the remainder shall be entered as well as satisfaction on the judgment for the smaller sum; and if both sums shall be equal, satisfaction shall be entered upon both judgments.

Proceedings when there are cross judgments.

LII. And be it enacted, That in any suit brought in any Court for the recovery of any sum awarded by any judgment in a Division Court held

No suit on a judgment of a Division Court.

under this Act, no costs shall be recoverable without the order of the Judge, on sufficient cause being shewn.

Execution how
granted and
enforced.

LIII. And be it enacted, That whenever the Judge of any Division Court shall make an order for the payment of money, it shall be lawful for the party in whose favor such order shall be made, in case of default or failure of payment thereof at the times and in the manner thereby directed, to sue out execution against the goods and chattels of the party against whom such order shall be made; and thereupon the Clerk of the Court, at the request of the party prosecuting such order for the payment of money, shall issue under the seal of the Court a precept in the nature of *fieri facias* to one of the Bailiffs of the Court, who by virtue of such precept shall levy by distress and sale of the goods and chattels of such party, being within the County within which the said Court was holden, such sum of money and costs (together with interest thereon from the date of the entry of the judgment) as shall be so ordered, and past due, and shall pay the same over to the said Clerk.

The Bailiff or
Clerk may
receive a con-
fession of debt.

LIV. And be it enacted, That it shall and may be lawful for any Bailiff or Clerk of the said Courts to accept and take a confession or acknowledgment of debt from any debtor or debtors desirous of executing the same before any suit commenced for the claim or demand, or from the defendant in any suit hereafter to be brought in any Division Court who may be desirous of making the same, and such confession or acknowledgment shall be in writing and witnessed by the Bailiff or Clerk at the time of the taking thereof; and upon the production of such confession or acknowledgment to the Judge, and its being proved by the oath of the said Bailiff or Clerk, judgment may be entered thereon; and such oath or affidavit shall state that the party making it has not received and is not to receive any thing from the plaintiff or defendant, or any other person, except his lawful fees, for taking such acknowledgment, and that he has no interest in the demand sought to be recovered.

Judgment may
be entered there-
on.

Execution may
issue in another
County when the
defendant has re-
moved to such
other County.

LV. And be it enacted, That if any person against whom a judgment shall or may have been entered up in any Division Court in any County in Upper Canada, shall remove to another County therein without satisfying the said judgment, it shall be lawful for the Judge of the Division Court of the County to which the said party has removed to order an execution for the debt and costs, for which judgment has been rendered in another County against such party, to issue against such party, upon the production of a copy of such judgment duly certified by the Judge of the County for which the judgment has been entered; Provided always, that if the party against whom such execution shall be awarded, shall, before an actual sale of the goods and chattels, pay or cause to be paid or tendered unto the Clerk or Bailiff of the Division Court out of which such execution has issued, such sum of money as aforesaid, or such part thereof as the said Plaintiff shall agree to accept in full of his debt, together with the fees to be levied, the execution shall be superseded, and the goods shall be released and restored to the said party.

Proviso: If party
pay the judgment
and costs.

Execution to be
dated, and re-
turnable within
thirty days.

LVI. And be it enacted, That every writ of execution issued by the Clerk of any Division Court shall be dated on the day when it shall actually issue, and shall be returnable within thirty days from the date thereof.

Execution
against lands on
return of *nulla
bona*—

LVII. And whereas it is expedient that judgments exceeding ten pounds in the said Courts shall in certain cases affect lands, and that execution should issue in certain cases against lands on judgments obtained in any Division Court, Be it enacted, That whenever judgment is rendered in favour of any Plaintiff or Defendant in any Division Court under this or any former Act hereby repealed, and any execution therein issued shall or may have been returned *nulla bona*, it shall be lawful for

How obtained—

such plaintiff or defendant to obtain a transcript of such judgment from the Clerk of such Court, under his hand and sealed with the seal of the said Court, which transcript shall set forth the proceedings in the cause, the date of issuing execution against the Defendant's or Plaintiff's goods and chattels, and the Bailiff's return of *nulla bona* thereon, as to the whole or a part, and upon filing such transcript in the Office of the Clerk of the County Court in the County where such judgment shall have been obtained, or in the County wherein the Defendant's or Plaintiff's lands are situate, the same shall become and is hereby declared to be a judgment of the said County Court, and the said Clerk of the County Court is hereby required to file the said transcript of Judgment on the day of the month on which he receives the same, and to enter a memorandum thereof in a book to be by him provided for that purpose, which memorandum shall contain the names of the Plaintiff and Defendant, the amount of the judgment, the amount remaining unsatisfied thereon, and the date of filing, for which services the said Clerk of the County Court shall be entitled to demand and receive from the person filing the same the sum of two shillings and six pence, and no more; and such book shall at all reasonable hours be accessible to any person desirous of examining the same, upon the payment to the said Clerk of six pence, and upon such filing and entry as aforesaid, the Plaintiff or Defendant shall, until the judgment is fully paid and satisfied, be entitled to pursue the same remedy for the recovery of the same or the balance due thereon, as if the judgment had been originally obtained from the County Court: Provided always, that no person shall be entitled to file a transcript of any such judgment in any County Court, unless the sum remaining unsatisfied on such judgment, and on the execution to be issued thereon, shall amount to the sum of ten pounds.

From County Courts.

Duty of Clerk of County Court.

Provided.

LVIII. And be it enacted, That it shall be lawful for any party obtaining judgment in any Division Court exceeding ten pounds at any time after fourteen days from the day of giving judgment, to obtain a certificate of any such judgment from the Clerk of such Division Court, in the form used in the Superior Courts as near as circumstances will permit, which certificate shall on the request of the party obtaining the same be registered in the same manner, and on payment of the same fees to the Register as are paid upon certificates of the judgments of the Superior Courts, and on such registry shall bind lands to the same extent as they would have been bound had the judgment been rendered in any of the Superior Courts.

Certificates of judgment may be obtained and registered against lands.

LIX. And be it enacted, That if any Bailiff shall neglect to return any writ of execution within three days after the return day thereof, or shall make a false return thereto, the party having sued out such writ may maintain an action on the covenant aforesaid against such Bailiff and his sureties in any Court having competent jurisdiction in Upper Canada aforesaid, and shall recover therein the amount for which the execution issued, with interest from the date of the judgment upon which such execution was issued, or such less sum as in the discretion of the Judge or Jury the Plaintiff under the circumstances may be justly entitled to recover; and if a judgment be obtained in such suit against the Bailiff and his sureties, execution shall immediately issue thereon; any thing in this Act, or in any other Act or law to the contrary notwithstanding; and in case of the departure or removal from the limits of the County, of such Bailiff, the action may be commenced and carried on against his sureties alone, or against any one or more of them.

Penalty on bailiff neglecting to make a return or wilfully making a false return.

How enforced.

LX. And be it enacted, That no sale of any goods which shall be taken in execution shall be had until after the end of eight days at least, next following the day on which such goods shall have been so taken,

At what time goods shall be sold after seizure in execution, &c.

Notice of Sale.

unless upon the request in writing, under the hand of the party whose goods shall have been taken; and the Bailiff, after taking goods and chattels into his custody by virtue of a writ of execution, shall indorse thereon the date of the seizure; and shall immediately give public notice by advertisement signed by himself, and put up at three of the most public places in the Division, where such goods and chattels shall be taken, of the time and place within such Division when and where they will be exposed to sale; which notice shall describe the goods and chattels taken, and shall be so put up at least eight days before the time appointed for the sale.

No Bailiff, &c., to purchase at such sale.

LXI. And be it enacted, That no Bailiff or other officer of any Division Court, shall, directly or indirectly, purchase any goods or chattels at any sale made by him under execution, and every purchase made in contravention of this enactment shall be absolutely void.

In what Court a Clerk or Bailiff may sue and be sued.

LXII. And be it enacted, That when any Clerk or Bailiff of any Division Court, either by himself or jointly with any other person or persons, is liable to be sued, or may sue any other person or persons, for a debt or demand within the jurisdiction of the Division Court of which he shall be a Clerk or Bailiff, then and in every such case such Clerk or Bailiff may sue, and shall be liable to be sued for any debt due to or by him, separately or jointly with any other person or persons, in the Court of any next adjoining Division in the same County, in the same manner, to all intents and purposes, as if the cause of action for which any such suit shall be brought, had arisen within such next adjoining Division, or the defendant or defendants were resident therein.

In certain cases the Judge may order immediate execution.

LXIII. And be it enacted, That it shall and may be lawful for the judge of the said Court, at any time after the giving and recording of any judgment, upon application being made to him by the party in whose favour such judgment shall be given, upon oath or other sufficient testimony to the satisfaction of the said Judge, that the party will be in danger of losing the amount of such judgment, if he be compelled to wait till the day of payment thereof before any execution can issue thereon, to order the issue of an execution at such time as he shall think fit.

Proceedings in case of absconding debtors, &c.

LXIV. And be it enacted, That if any person or persons in any County of Upper Canada, being indebted in any sum not exceeding twenty-five pounds, nor less than twenty shillings, for any debt or damages arising upon any contract, express or implied, or upon any judgment, shall abscond from this Province, leaving personal property liable to seizure under execution for debt, in any County in Upper Canada, or shall attempt to remove his, her or their personal property of the description above mentioned, either out of Upper Canada, or from one County to another therein, or from Upper to Lower Canada, or shall keep concealed in any County of Upper Canada to avoid service of process, it shall and may be lawful for any creditor or creditors of such person or persons, his, her or their servant or agent, to make application to the Clerk of any Division Court of the County wherein the debtor or debtors were or was last domiciled, or where the debt was contracted, or to the Judge of the County Court therein, or to any Justice of the Peace in any County of Upper Canada, and upon making or producing an affidavit or affirmation to the purport of that in the Schedule to this Act annexed, marked D, (which affidavit or affirmation the said Clerks, Judges and Justices of the Peace are respectively hereby authorized to administer,) and upon then and there filing the said affidavit or affirmation with such Clerk or Judge, or if taken before a Justice of the Peace, with such Justice of the Peace (whose duty it shall be to transmit the same forthwith to the Clerk of the Division Court, within whose Division the same was so made or taken, to be filed and kept among the papers

Affidavit required.

in the cause), it shall be lawful for such Clerk, Judge or Justice of the Peace forthwith to issue a warrant under his hand and seal, directed to the Bailiff of the Division Court, within which the same was issued, or to any Constable of the County, commanding such Bailiff or Constable to attach, seize, take and safely keep all the personal estate and effects of the absconding, removing or concealed person or persons, of what nature and kind soever, liable to seizure under execution for debt within such County, or a sufficient portion thereof, to secure the sum mentioned in the warrant, with the costs of the action, and to return the same forthwith to the Division Court of the Division wherein such warrant was issued, upon receipt of which warrant the Bailiff or Constable to whom the same may be directed, shall upon being paid his lawful fees for levy, mileage and otherwise thereupon, including the fees of appraisement, forthwith execute the same, and make a just and true inventory of all such personal estate and effects, as he shall seize and take by virtue thereof, and such Bailiff or Constable shall within twenty-four hours thereafter call to his aid two Freeholders, who shall first be sworn by such Bailiff or Constable, to appraise the said personal estate and effects so seized; and such Bailiff or Constable shall forthwith return the said Inventory which shall be attached to such appraisement to the Clerk of the Division Court of the Division within which such warrant was issued, and which warrant may be in the form of that in the Schedule to this Act annexed, marked E: Provided always, that the said appraisers shall be entitled to receive for each day they may be employed in carrying its enactments into effect, the sum of two shillings and six pence each, to be paid in the first instance by the plaintiff or plaintiffs and allowed in the costs of the cause: Provided always, that proceedings may be conducted to judgment and execution in any case commenced by attachment under the provisions of this section, in the Division Court of the Division within which the warrant of attachment shall issue; and that when proceedings shall be commenced in any case before the issuing of an attachment under the provisions of this section, such proceedings may be continued to judgment and execution in the Division Court within which such proceedings may have been commenced; and the property seized upon any such attachment shall be liable to seizure and sale under the execution to be issued upon such judgment, or the proceeds thereof, in case such property shall have been sold as perishable, shall be applied in satisfaction of such judgment; Provided further, that it shall not be lawful for any plaintiff to divide any cause of action into two or more suits for the purpose of bringing the same within the provision of this section, but any plaintiff having a cause of action above the value of twenty-five pounds, for which an attachment might be issued under this section, if the same were not above the value of twenty-five pounds, may abandon the excess, and upon proving his case, shall and may recover to an amount not exceeding twenty-five pounds, and the judgment of the Court in such case shall be in full discharge of all demands in respect of such cause of action, and the entry of judgment therein shall be made accordingly.

LXV. And be it enacted, That whenever several attachments shall be issued against any party, as authorized by the next preceding section of this Act, the proceeds of the goods and chattels which shall have been attached, shall not be paid over to such attaching creditor or creditors according to priority, but they shall be rateably distributed among such of the creditors suing out the said attachments as shall obtain judgment against the debtor, in proportion to the amount of the sums really due upon such judgments; and no distribution shall take place until reasonable time, in the opinion of the Judge, has been allowed to the several creditors to proceed to judgment: Provided always, that

Warrant to issue.

Duty of Bailiff or Constable on receiving such warrant.

Form of Warrant. Proviso.

Fees to Appraiser.

Proviso: where proceedings may be conducted to judgment.

Liability of property seized.

Proviso: cause of action not to be divided, but excess may be abandoned.

Provision when there is more than one attachment.

Proviso: when

goods seized will not satisfy all.

when such goods and chattels shall not be sufficient to satisfy the claims of all the attaching creditors, none shall be allowed to share, unless he shall have sued out his attachment, and given notice thereof to the Clerk of the Division Court out of which the first attachment shall have issued or shall be returnable, within one month from the issuing of such first attachment.

Property seized to be in custody of Clerk of Division Court.

LXVI. And be it enacted, That all property seized under the provisions of the next preceding section, shall be forthwith handed over to the custody and possession of the Clerk of the Division Court of the Division within which the warrant was issued, who shall take the same into his charge and keeping, and shall be allowed all necessary disbursements for keeping the same.

Persons against whose effects, &c., a warrant is issued may tender a bond to their Creditors, with sureties, prior to judgment, and obtain a release of the goods.

LXVII. And be it enacted, That if any person or persons against whose estate or effects such warrant or warrants as aforesaid, may have been issued, or any person or persons on his, her or their behalf, shall at any time prior to the recovery or judgment in the cause, execute and tender to the creditor or creditors, who sued out such warrant or warrants as aforesaid, and shall file in the Division Court to which the warrant or warrants of attachment shall have been returned, a bond with good and sufficient sureties, to be approved of by the Judge or Clerk of the Division Court, binding the obligors, jointly and severally, in double the amount of the sum claimed, with condition that the debtor or debtors (naming him, her or them) shall in the event of the claim being proved and judgment being recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same, or the value of the property so taken and seized, to the claimant or claimants, or shall produce such property whenever thereunto required to satisfy such judgment, it shall and may be lawful for such Clerk to supersede such warrant, and all and singular the property which may have been attached, shall then be restored.

As to party not appearing within one month after warrant issued against him.

LXVIII. And be it enacted, That if after the period of one month from the seizure aforesaid, the party against whom the warrant issued, or some one on his behalf, do not appear and give such bond with sureties conditioned as above mentioned, whenever and as soon as judgment shall have been obtained upon such claim or claims, execution thereupon may immediately issue and the property seized upon such attachment or attachments, or enough of such property to satisfy the same, may be sold thereon to satisfy the same according to law, or enough of the proceeds thereof may be applied to satisfy the judgment and costs, if the same shall have been previously sold under the provisions hereinafter made, as perishable property: Provided always, that when a summons has been personally served on the party whose property shall have been seized as aforesaid, and before such seizure, then the trial of the cause shall be proceeded with, as if no such attachment had issued, and execution shall forthwith be awarded after judgment, unless otherwise ordered by the Judge.

Proviso.

Service of process how made in the cases last mentioned.

LXIX. And be it enacted, That in order to proceed in the recovery of any debt due by the person or persons against whose property a warrant shall have issued under this Act, where process shall not have been previously served, the same may be served either, personally or by leaving a copy at the last place of abode, trade or dealing of the defendant, with any person or persons there dwelling, or by leaving the same at the said dwelling if no person be there found; and in every case, all subsequent proceedings shall and may be conducted according to the usual course of practice and proceedings in the Division Court aforesaid: Provided always, that if it shall appear to the satisfaction of the Judge in the trial of any cause, upon affidavit, sworn to in manner authorized by this Act with regard to other affidavits or other sufficient

Proviso: if no reasonable cause of seizure.

proof, that the creditor or creditors suing out an attachment under the provisions of this Act, had not reasonable or probable cause for taking such proceedings, then it shall be the duty of the Judge to order that no costs whatever shall be allowed to such creditor or creditors, plaintiff or plaintiffs therein, and no costs in such case shall be recovered in the cause.

LXX. And be it enacted, That in case any horses, cattle, sheep, or other perishable goods or chattels, shall be taken upon any warrant to be issued as aforesaid, it shall be lawful for the Clerk of the Court in whose custody or keeping the same shall be, the same having been first appraised as aforesaid and at the request of the plaintiff suing out the warrant, to expose and sell the same at public auction, to the highest bidder, giving at least eight days' notice at the office of the Clerk of the said Division Court, and at two other public places within such Division, of the time and place of such sale, if the articles seized will admit of being so long kept, otherwise to sell the same at his discretion: Provided always, That it shall not be compulsory upon the Bailiff or Constable to seize, or upon the Clerk to sell such perishable articles, until the party suing out the warrant shall have given a bond to the defendant or defendants therein, with good and sufficient sureties in double the amount of the appraised value thereof (to be ascertained as aforesaid) conditioned that the party directing such seizure and sale will repay the value thereof, together with all costs and damages that may be incurred in consequence of such seizure and sale, in case judgment be not obtained for such party suing out such attachment, which bond shall also be filed with the papers in the cause: Provided always, that any bond given in the course of any proceeding under this Act, may be sued in any Division Court of the County wherein the same shall have been executed, and proceedings may thereupon be carried on to judgment and execution in such Court, notwithstanding the penalty contained in such bond may exceed the sum of twenty-five pounds: And provided further, that every bond shall and may be delivered up to the party entitled to the same, by the order and at the discretion of the Judge of such Court, to be enforced or cancelled, as the case may require.

LXXI. And be it enacted, That any residue which may remain after satisfying such judgments with the costs thereupon, shall be delivered to the defendant, or to the Agent of the defendant, or to any person in whose custody the goods were found,—whereupon the responsibility of the Clerk, as respects such property, shall cease.

LXXII. And be it enacted, That the Judges of the said Courts upon proof of and being satisfied with the general correctness of the plaintiff's books, may receive the same in evidence, and give judgment to the amount of five pounds in any cause within the said Courts, except in tort or trespass, and that it shall be lawful for the Judge of any such Division Court in his discretion to grant a new trial upon application of either party within fourteen days after the trial of any cause therein.

LXXIII. And whereas it is desirable that judgments in the said Division Courts, and in the Courts of Requests for the trial of Small Causes in Upper Canada should be recovered by and against the personal representatives of the parties thereto; Be it therefore enacted, that in the event of the death of either or both of the parties to any such judgment, it shall and may be lawful for the party in whose favor such judgment may have been entered, or his personal representatives in case of his death, to revive such judgment against the other party or his personal representatives in case of his death, and to issue Execution thereon as may be provided and established by the Judges of the said Courts respectively.

LXXIV. And whereas under the former Act relative to the Court of

Perishable articles taken upon warrant may be sold forthwith.

Proviso: security may be required from the plaintiff.

Proviso.

proviso.

Residue of proceeds how disposed of.

Plaintiff's books may be evidence in certain cases.

Revivor of suits against the party dying.

Recital.

DIVISION COURTS ACT.

Requests, various Clerks were appointed for Townships and other localities under the Commissioners; And whereas, when the Division Court Act was passed, no provisions were therein contained for the delivery up of the books, papers, and documents connected with the business and with the claims of suitors; And whereas it has been found inconvenient that such books, papers, and documents should remain elsewhere than with the Clerks of the different Division Courts: Be it therefore enacted, That it shall and may be lawful for the Judge of the County Court, by writing under his hand, to require any person or persons in whose possession or custody any such books, papers or documents shall or may be, to deliver the same, or all, or any, or either thereof, as he shall see fit, over to such Division Court Clerk as he shall name, and in the event of the same not being delivered in compliance with such order or requisition, it shall and may be lawful for Her said Majesty's Court of Queen's Bench, or Court of Common Pleas, or for any Judge thereof in vacation, to proceed against such person or persons in the like manner as provided for in any of the foregoing sections of this Act.

Provision as to papers in the hands of former Clerks of the Court of Request.

Punishment of persons wilfully insulting any Judge.

LXXV. And be it enacted, That if any person shall wilfully insult the Judge or any Officer of any Division Court, during his sitting or attendance in Court, or shall wilfully interrupt the proceedings of such Court, it shall be lawful for any Bailiff or officer of the Court, with or without the assistance of any other person, by order of the Judge, to take such offender into custody, and the Judge may impose upon any such offender a fine not exceeding the sum of five pounds, and in default of immediate payment thereof, it shall be lawful for the said Judge, by warrant under his hand and seal, to commit the offender to the Common Gaol of the County for any period not exceeding one calendar month, unless such fine and costs, with the expenses attending the commitment, be sooner paid.

Punishment of any Bailiff or Officer guilty of extortion.

LXXVI. And be it enacted, That if any Bailiff or Officer of any Division Court, acting under colour or pretence of the process of such Court, shall be guilty of extortion or misconduct, or shall not duly pay or account for any money levied or received by him under the authority of this Act, it shall be lawful for the Judge at any sitting of the Court, if the party aggrieved shall think fit to complain to him, in writing, to inquire into such matter in a summary way, and for that purpose to summon and enforce the attendance of all necessary parties, and to make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received as aforesaid, and for the payment of any such damages and costs to the parties aggrieved as the Judge shall think just; and in default of payment of any money so ordered to be paid by such Bailiff within the time specified for the payment thereof in such order, it shall be lawful for the Judge, by warrant under his hand and seal, to cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of such distress and sale, and in default of such distress (or summarily in the first instance) to commit the offender to the Common Gaol of the County for any period not exceeding three calendar months.

Punishment of Clerks, Bailiffs, &c., taking other than their proper fees, &c.

LXXVII. And be it enacted, That if any Clerk, Bailiff or other Officer employed in putting this Act or any of the powers thereof into execution, shall exact, take or accept any fee or reward whatsoever, other than and except such fees as are or shall be appointed and allowed respectively as aforesaid for or on account of anything done or to be done by virtue of this Act, on any account whatsoever relative to putting this Act into execution, every such person so offending, shall, upon proof thereof before the said Court, be forever incapable of serving or

being employed under this Act, in any office of profit or emolument, and shall also be liable in damages to the party aggrieved.

LXXXVIII. And be it enacted, That in case any action shall be prosecuted after the commencement of this Act, in any County or Superior Court of Record, for any cause which might have been entered in a Division Court under this Act, and the Plaintiff shall obtain judgment for a sum not exceeding the respective sums to which the jurisdiction of a Division Court is by this Act limited, no more costs shall be taxed against the Defendant than would have been incurred in the Division Court in carrying on the same action, unless the Judge who presides at the trial of such action shall certify in open Court immediately after the verdict is recorded, that it was a fit cause to be withdrawn from the Division Court, and to be commenced in such County or Superior Court; provided also, that so much of the costs of the Defendant to be taxed as between Attorney and Client in any such suit wherein the Judge shall not certify as aforesaid, as shall exceed the costs of defence, taxable and which would have been incurred in the Division Court in defending the same action, shall be set off and allowed by the taxing officer, on entering judgment, against the costs to be taxed for the plaintiff and recoverable from the defendant, who shall be entitled to execution, with the costs thereof, against the plaintiff, when the amount of the costs so set off shall exceed the plaintiff's verdict and taxable costs: And provided also, that no execution on such suit shall issue against lands, unless the amount of such judgment shall equal the sum for which execution against lands are authorized by this Act.

LXXXIX. And be it enacted, That when any levy or distress shall be made for any sum of money to be levied by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party or parties making the same be deemed a trespasser or trespassers, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto; nor shall the party or parties distraining, be deemed a trespasser or trespassers from the beginning on account of any irregularity which shall afterwards be committed by the party or parties so distraining, but the person or persons aggrieved by such irregularity shall and may recover full satisfaction for the special damage.

LXXX. And be it enacted, That it shall and may be lawful for any executor or administrator to sue and be sued in any Courts holden under the authority of this Act in like manner as if he were a party in his own right, and the judgment and execution shall be such as in the like cases would be given or issued in any Superior Court.

LXXXI. And be it enacted, That on the hearing or trial of any action or in any other proceeding in the said Division Courts holden under this Act, the parties thereto, and all other persons may be summoned as witnesses and examined either on behalf of the Plaintiff or Defendant, upon oath, (or solemn affirmation, in those cases in which persons are allowed to make affirmation instead of taking an oath,) to be administered by the proper officer of the Court: Provided always, that no party to the suit shall be summoned or examined, except at the instance of the opposite party or the Judge.

LXXXII. And be it enacted, That payment of any fine imposed by any Court under the authority of this Act, may be enforced upon the order of the Judge, in like manner as judgment for any sum adjudged in the said Court, and shall be accounted for as herein provided.

LXXXIII. And be it enacted, That all the costs of any action or proceeding in any Division Court not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the Judge shall

As to costs where a Plaintiff shall bring in a Superior Court, an action which ought to have been brought in a Division Court provided for.

Proviso.

Proviso.

Certain informations in levying not to make the party a trespasser from the beginning.

Executors, &c., may sue in Division Courts.

All persons may be examined as witnesses in Division Courts.

Proviso: exception.

How fines imposed by this Act may be enforced

Costs to be apportioned in such manner as the

Judges shall think fit.

think fit, and in cases where the plaintiff shall not appear in person or by some person on his behalf, or appearing shall not make proof of his demand to the satisfaction of the Judge, it shall be lawful for the Judge, if he shall think fit, to award to the defendant such costs and such further sum of money by way of satisfaction for his trouble and attendance as he in his discretion may think proper, to be recovered as provided for in other cases under this Act, and in default of any special direction, the costs shall abide the event of the action, and execution may issue for the recovery of such costs in like manner as for any debt adjudged in the said Court.

If no special direction.

Judgments in Division Courts to be final: non-suits and new trials allowed.

LXXXIV. And be it enacted, That every order and judgment of any Division Court holden under this Act, except as herein provided, shall be final and conclusive between the parties, but the Judge shall have power to non-suit the plaintiff in any case in which satisfactory proof shall not be given to him entitling either the plaintiff or the defendant to the judgment of the Court, and any plaintiff may elect to be non-suited by the Judge and insist thereon, and the Judge shall also in every case whatever have the power, if he shall think fit, to order a new trial to be had upon such terms as he shall think reasonable, and in the meantime to stay the proceedings: Provided such new trial be applied for, at furthest, within fourteen days, and good grounds be shewn therefor by the party so applying.

Proviso.

In certain cases suits may be removed by *certiorari*.

LXXXV. And be it enacted, That any suit brought in any Division Court holden under this Act may be removed or removable from the said Court into Her Majesty's Court of Queen's Bench, or Court of Common Pleas in Upper Canada, by any writ of *certiorari*, provided the debt or damage claimed shall amount to ten pounds and upwards, and provided leave be obtained of one of the Judges of the said Court of Queen's Bench, or Court of Common Pleas, in cases which shall appear to the said Judge fit to be tried in either of the said Superior Courts, and not otherwise, and upon such terms as to payment of costs or such other terms as he shall think fit.

Each Court to have a seal.

LXXXVI. And be it enacted, That for every Court holden under the authority of this Act there shall be made a seal of the Court to be paid for out of the Fee Fund, and all summonses and other process issuing out of the said Court shall be sealed or stamped with the seal of the Court; and every person who shall forge the seal or any process of the Court, or who shall serve or enforce any such forged process, knowing the same to be forged, or deliver or cause to be delivered to any person any paper falsely purporting to be a copy of any summons or other process of the said Court, knowing the same to be false, or who shall act or profess to act under any false color or pretence of the process of the said Court, shall be guilty of felony.

Punishment for forging it.

Mode of serving process out of the Division.

LXXXVII. And be it enacted, That any summons or other process which under this Act shall be required to be served out of the division of the Court from which the same shall have issued, may be served by the Bailiff of such or any other Division Court in Upper Canada holden under this Act, and such service shall be as valid as if the same had been made by a Bailiff of the Court out of which the summons or process shall have been issued, within the jurisdiction of the Court for which he acts.

Mode of proving such service.

LXXXVIII. And be it enacted, That service of any summons or other process of any Division Court which shall require to be served out of the division of the said Court may be proved by affidavit purporting to be sworn before any Judge or Clerk of a Division Court, or before any person authorized by Law to take affidavits in the Superior Courts of Common Law in Upper Canada; and the fee for drawing such affidavit,

Fee on affidavit of service.

by whomsoever done, shall be six pence, and for administering the Oath by a duly qualified person, six pence, and no more in either case, and shall be, together with the postages on the papers if transmitted by mail, costs in the cause; and in every case of the unavoidable absence of the Bailiff by whom any summons or other process of a Court holden under this Act shall have been served, the service of such summons or other process may be proved, if the Judge shall think fit, in the same manner as a summons served out of the Division of the Court, but without additional charge to either of the parties of the suit.

Unavoidable absence of Bailiff.

LXXXIX. And be it enacted, That every Bailiff or Officer executing any process of execution issuing out of any Division Court in Upper Canada, against the goods and chattels of any person, may by virtue thereof seize and take any of the goods and chattels of such person (excepting the wearing apparel and bedding of such person or his family, and the tools and implements of his trade to the value of five pounds, which shall to that extent be protected from such seizure), and may also seize and take any money or bank notes and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money, belonging to any such person against whom any such execution shall have issued as aforesaid.

What goods may be taken in execution.

Securities for money.

XC. And be it enacted, That the Bailiff of every such Division Court shall hold any cheques, bills of exchange, promissory notes, bonds, specialties, or other securities for money which shall have been so seized or taken as aforesaid, as a security or securities for the amount directed to be levied by such execution, or so much thereof as shall not have been otherwise levied or raised for the benefit of the plaintiff, and the plaintiff may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for the recovery of the sum or sums secured or made payable thereby when the time of payment thereof shall have arrived; and it shall not be competent for the defendant in the original cause to discharge such suit in any way without the consent of the plaintiff or of the Judge: Provided always that the party who desires to sue for any such amount, shall in the first place pay or secure all costs that may attend the proceeding, and the moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same to apply on the plaintiff's demand, and the overplus, if any, shall be forthwith paid to the defendant in the original suit, under the direction of the Judge.

How money and securities for money shall be dealt with after seizure.

Proviso: security to be given for costs, &c.

XCI. And be it enacted, That it shall be lawful for any party who has obtained any unsatisfied judgment or order in any Division Court, for the payment of any debt or damages or costs, to obtain a summons from any Division Court within the limits of which the defendant in any such suit shall then dwell or carry on his business, such summons to be in such form as the Judge of such Court shall from time to time direct, and to be served personally upon the person to whom it is directed, requiring him to appear at such time and place as shall be directed in such summons, to answer such things as are named in such summons, and if he shall appear in pursuance of such summons, he may be examined upon oath, touching his estate and effects, and the manner and circumstances under which he contracted the debt or incurred the damages or liability which is the subject of the action in which judgment has been obtained against him, and as to the means and expectation he then had, and as to the property and means he still hath, of discharging the said debt or damages or liability, and as to the disposal he may have made of any property, and the person obtaining such summons as aforesaid and all other witnesses whom the Judge shall think requisite, may be examined upon oath, touching the enquiries authorized to be made as aforesaid; and the costs of such summonses and of all pro-

A defendant against whom there shall be an unsatisfied judgment, may be summoned and examined as to his means of satisfying the same.

ceedings thereon, shall be deemed costs in the cause, unless the Judge shall otherwise order and direct.

Proceedings if a defendant shall refuse to attend or to be examined, or shall have contracted the debt without reasonable expectation of being able to satisfy it, or be guilty of any fraud, &c.

XCII. And be it enacted, That if the party so summoned shall not attend as required by such summons, and shall not allege a sufficient reason for not attending, or shall, if attending, refuse to be sworn or to declare any of the things aforesaid, or if he shall not make answer touching the same to the satisfaction of such Judge, or if it shall appear to such Judge either by the examination of the party or by any other evidence, that such party in incurring the debt or liability which is the subject of the action in which judgment has been obtained, has obtained credit from the plaintiff under false pretences or by means of fraud or breach of trust, or has wilfully contracted such debt or liability without having had at the same time a reasonable expectation of being able to pay or discharge the same, or shall have made or caused to be made any gift, delivery or transfer of any property, or shall have removed or concealed the same with intent to defraud his creditors or any of them, or if it shall appear to the satisfaction of the Judge that the said party so summoned has then or has had since the judgment obtained against him, sufficient means and ability to pay the debt or damages, or costs so recovered against him, either altogether or by any instalment or instalments which the Court in which the judgment was obtained shall have ordered, and if he shall refuse or neglect to pay the same as shall have been so ordered, or as shall be ordered pursuant to the power hereinafter provided, it shall be lawful for such Judge, if he shall think fit, to order that any such party may be committed to the Common Gaol of the County in which the party summoned is resident, for any period not exceeding forty days.

Order allowing payments by instalments may be rescinded.

XCIII. And be it enacted, That it shall be lawful for the Judge of any Division Court before whom such summons shall be heard, if he shall think fit, whether or not he shall make any order for the committal of the defendant, to rescind or alter any order that shall have been previously made against any defendant so summoned before him for the payment, by instalments or otherwise, of any debt or damages recovered, and to make any further or other order, either for the payment of the whole of such debt or damages and costs forthwith, or by any instalments, or in any other manner, as such Judge may think reasonable and just.

Defendant personally appearing in any case may be examined.

XCIV. And be it enacted, That in every case where the defendant in any suit brought in any Division Court shall have been personally served with the summons to appear, or shall personally appear at the trial of the same, the Judge, at the hearing of the cause or at any adjournment thereof, if judgment shall be given against the defendant, shall have the same power and authority of examining the defendant and the plaintiff and other parties, touching the several things hereinbefore mentioned, and of committing the defendant to prison, and of making an order, as he might have and exercise under the provisions hereinbefore contained in case the plaintiff had obtained a summons for that purpose after the judgment obtained as hereinbefore mentioned.

And the Plaintiff.

Proceedings in case of committed by the Court.

XCv. And be it enacted, That whenever any order of commitment shall have been made as aforesaid, the Clerk of the said Court shall issue under the seal of the Court, a warrant of commitment directed to the Bailiff of any Division Court within the County, who by such warrant shall be empowered to take the body of the person against whom such order shall be made; and all Constables and other Peace Officers within their respective jurisdictions shall aid in the execution of every such warrant, and the gaoler or keeper of the Gaol of the County in which such warrant shall issue, shall be bound to receive and keep the

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defendant therein until discharged under the provisions of this Act or otherwise by due course of law; and no protection, order or certificate granted by any Court of Bankruptcy, or for the relief of insolvent debtors, shall be available to discharge any defendant from any commitment under such last mentioned order.

No protection available.

XCVI. And be it enacted, That no imprisonment under this Act shall in any wise operate as a satisfaction or extinguishment of the debt or other cause of action on which a judgment has been obtained, or protect the defendant from being anew summoned and imprisoned for any new fraud or other default rendering him liable to be imprisoned under this Act, or deprive the plaintiff of any right to take out execution against the defendant, in the same manner as if such imprisonment had not taken place.

Imprisonment not to act as an extinguishment of the debt, &c.

XCVII. And be it enacted, That in all cases where a warrant of execution shall have issued against the goods and chattels of any party, or an order for his commitment shall have been made under this Act, and such party or his goods and chattels shall be out of the County, it shall be lawful for the Bailiff of the Court either to execute such warrant of execution or of commitment himself, in any County or place where such party or his goods may be, or to send the same to the Clerk of any other Division Court constituted under this Act, within the jurisdiction of which such party or his goods and chattels shall then be or be believed to be, with a warrant thereto annexed under the hand of a Bailiff of the Court and seal of the Court from which the original warrant issued, requiring execution of the same, and the Clerk of the Court to which the same shall be sent shall seal or stamp the same with the seal of his Court, and issue the same to a Bailiff of his Court, and thereupon such last mentioned Bailiff shall be authorized to act in all respects as if the original warrant of execution or commitment had been directed to him by the Court of which he is a Bailiff, and shall within such time as this Act directs, return to the Bailiff of the Court from which the same originally issued, what he shall have done in the execution of such process, and in case a levy shall have been made, shall within such time as this Act directs, pay over all moneys received in pursuance of the warrant to the Bailiff of the Court from which the same shall have originally issued, retaining the fees for execution of the process; and where any order of commitment shall have been made and the person apprehended, he shall be forthwith conveyed, in custody of the Bailiff or Officer apprehending him, to the Gaol of the County in which he shall have been apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged under the provisions of this Act, and all Constables and other Peace Officers shall be aiding and assisting within their respective Counties in the execution of such warrant.

Mode of executing warrant of execution or commitment out of the County in which it is obtained.

Payment of moneys levied.

Place of imprisonment.

XCVIII. And be it enacted, That if it shall at any time appear to the satisfaction of the Judge, by the oath or affirmation of any person or otherwise, that any defendant is unable, from sickness or other sufficient cause, to pay and discharge the debt and damages recovered against him, or any instalment thereof ordered to be paid as aforesaid, it shall be lawful for the Judge in his discretion to suspend or stay any judgment, order or execution given, made or issued in such action, for such time and on such terms as the Judge shall think fit, and so from time to time until it shall appear by the like proof as aforesaid, that such temporary cause of disability has ceased.

In certain cases the Judge may suspend execution, &c.

XCIX. And be it enacted, That any person imprisoned under this Act, who shall have paid or satisfied the debt or demand or the instalment thereof payable, and the costs remaining due at the time of the order of imprisonment being made, together with the costs of obtaining such

Defendant imprisoned to be discharged on payment of debt and costs.

DIVISION COURTS ACT.

order, and all subsequent costs, shall be discharged out of custody, upon the certificate of such payment or satisfaction, signed by the Clerk of the Court, or by leave of the Judge of the Court in which the order of imprisonment was made.

Punishment for assaulting Bailiff or receiving goods seized.

C. And be it enacted, That if any Officer or Bailiff of any Court holden under this Act, (or his Deputy or Assistant), shall be assaulted while in the execution of his duty, or if any rescue shall be made or attempted to be made, of any goods and chattels or other property seized under a process of the Court, the person so offending shall be liable to a fine not exceeding five pounds, to be recovered by order of the Court, or before a Justice of the Peace of the County in which such Court is situate, as hereinafter provided, (and to be imprisoned for any term not exceeding three calendar months;) and it shall be lawful for the Bailiff of the Court, or any peace officer in any such case, to take the offender into Custody, (with or without warrant,) and bring him before such Court or Justice accordingly.

Penalty on Bailiff causing loss to a plaintiff by neglect or connivance.

CI. And be it enacted, That in case any Bailiff of any Division Court holden under this Act, who shall be employed to levy any execution against goods and chattels, shall, by neglect or connivance or omission, lose the opportunity of levying any such execution, then upon complaint of the party aggrieved by reason of such neglect, connivance or omission, if he shall think fit so to do, (and the fact alleged being proved to the satisfaction of the Court, on the oath of any credible witness,) the Judge shall order such Bailiff to pay such damages as it shall appear the plaintiff has sustained thereby, not exceeding in any case the sum of money for which the said execution issued, and the Bailiff shall be liable thereto; and upon demand made thereof, and on his refusal so to pay and satisfy the same, payment thereof shall be enforced by such ways and means as are herein provided for enforcing judgments recovered in the said Court.

How claims by third parties to or upon goods seized in execution, shall be determined.

CII. And be it enacted, That if any claim shall be made to or in respect to any goods or chattels, property or security, taken in execution or attachment under the process of any Court holden under this Act, or by any person not being the party against whom such process has issued, it shall be lawful for the Clerk of the Court, upon application of the officer charged with the execution of such process, or for the officer himself, as well before as after any action brought against such officer, to issue a summons calling before the said Court, at the next sitting thereof for the Division, as well the party issuing such process as the party making such claim, and thereupon any action which shall have been brought in any of Her Majesty's Superior Courts of Record, or in a Local or Inferior Court in respect of such claim, shall be stayed, and the Court in which such action shall have been brought, or any Judge thereof, on proof of the issue of such summons, and that the goods and chattels or other property were so taken in execution or upon attachment, may order the party bringing such action to pay the costs of all proceedings had upon such action after the issue of such summons out of the Division Court, and the Judge of the Division Court at such next sitting, or as soon after Court as convenient, shall adjudicate upon such claim, and make such order between the parties in respect thereof, and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in such Court, and such order shall be final and conclusive between the parties.

Application of penalties under this Act.

CIII. And be it enacted, That the moneys arising from any penalties, forfeitures and fines imposed by this Act, when paid and levied, shall (if not by this Act directed to be otherwise applied,) from time to time be paid to the Clerk of the Court by which the same shall be imposed,

DIVISION COURTS ACT.

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and shall be paid by him into the hands of the Treasurer of the County to be accounted for as part of the Fee Fund.

CIV. And be it enacted, That in all cases in which by this Act any penalty or forfeiture is made recoverable before a Justice of the Peace, it shall be lawful for such Justice to summon before him the party complained against, and on such summons to hear and determine the matter of such complaint, and on proof of the offence to convict the offender, and to adjudge him to pay the penalty or forfeiture incurred, and to proceed to recover the same, although no information in writing shall be exhibited before him, and all such proceeding by summons without information in writing, shall be as valid and effectual to all intents and purposes, as if an information in writing had been exhibited.

Proceedings for recovery of penalties before a Justice of the Peace.

CV. And be it enacted, That in all cases where any conviction shall be had for any offence committed against this Act, the form of conviction may be in the words or to the effect following, that is to say:

Form of conviction for offences against this Act.

Be it remembered, That on this _____ day of _____ in the year of our Lord _____ A. B. is convicted before one of Her Majesty's Justices of the Peace for the County of _____ or before a Judge acting under an Act passed in the _____ year of the reign of Her Majesty Queen Victoria, intituled, *An Act, &c. (insert the title of this Act,) of having (note the offence); and I, (or we) the said _____ do adjudge the said _____ to forfeit and pay for the same the sum of _____ or to be committed to the Common Gaol of the County of _____ for the space of _____ : Given under _____ hand and seal, the day and year aforesaid.*

CVI. And be it enacted, That no order, verdict or judgment, or other proceedings made concerning any of the matters aforesaid, shall be quashed or vacated for any matter of form.

No proceedings to be quashed, &c. for want of form.

CVII. And for protection of persons acting in the execution of this Act, Be it enacted, That all actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the County where the fact was committed, and shall be commenced within six calendar months after the fact was committed, and not afterwards or otherwise; and notice in writing of such action and of the cause thereof shall be given to the Defendant, one calendar month at least before the commencement of the action; and no Plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if after action brought, a sufficient sum of money shall have been paid into Court with costs, by or on behalf of the defendant, and it shall be lawful in any such action for the defendant to plead the general issue, and to give any special matter arising under this Act under such plea.

Notice of action.

Tender of amends.

CVIII. And be it enacted, That if any person shall bring any suit in any of Her Majesty's Superior Courts of Record in respect of any grievances committed by any Clerk, Bailiff or Officer of any Court holden under this Act, under colour or pretence of the process of the said Court, and the Jury upon the trial of the action shall not find greater damages for the Plaintiff than the sum of Two Pounds Ten Shillings, no costs shall be awarded to the Plaintiff in such action, unless the Judge shall certify in Court upon the back of the record, that the action was fit to be brought on in such Superior Court.

In certain cases the plaintiff shall recover no costs.

CIX. And whereas the amount of business in certain Divisions is not so great as to require the holding of Courts therein once in every two months, while from the remoteness and inaccessibility of the same, the holding of the said Courts therein is, especially at certain seasons of the year, attended with great difficulty: Be it therefore enacted, That if it

Recital.

DIVISION COURTS ACT.

Governor may
fix periods of
holding Courts.

Proviso.

Judges to require
accounts on oath
from Clerks.

Interpretation of
word "County."

Proceedings under
repealed Acts
to continue.

Commencement
of Act.

shall be certified to the Governor in Council, by the Magistrates of any County in Quarter Sessions assembled, that in any Division of such County it is expedient for the above causes that such Courts should be held there less frequently than once in every two months, it shall and may be lawful for the Governor in Council to order such Courts to be held therein, at such periods as to him shall seem meet: Provided always, that such Courts shall be held in any such Division at least once in every six months, and that it shall be lawful for the Governor in Council to revoke any such order at pleasure.

CX. And be it enacted, That it shall be the duty of the Judge of each County Court to require from the respective Clerks within his County, at least semi-annually, a detailed statement, to be verified on oath before such Judge, of all fees and emoluments, which statement shall be filed by such Judge, with the said Treasurer: Provided always, that after this Act shall come into force it shall not be lawful for any County Court Clerk to be appointed or execute the office of Clerk of any Division Court.

CXI. And be it enacted, That in construing this Act, the word "County" shall include any two or more Counties united for judicial purposes, and in any form or proceeding, the words "United Counties" shall and may be introduced according to law, and circumstances rendering the same necessary.

CXII. Provided always, and be it enacted, That all proceedings in the execution of the said Acts in the Preamble to this Act recited, or any of them, commenced before the passing of this Act, or before the day appointed for its going into operation, shall be as valid to all intents and purposes as if this Act had not been passed, and may be continued, executed and enforced against all persons liable thereto in the same manner as if they had been commenced under the authority of this Act.

CXIII. And be it enacted, That this Act shall come into force on the first day of January next, and not before.

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SCHEDULES.

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SCHEDULE A.

TABLE OF FEES.

	Not exceeding £2.	Exceeding £2, and not exceeding £5.	Exceeding £5, and not exceeding £10.	Exceeding £10, and not exceeding £15.	Exceeding £15
FEE FUND.					
Entering account and issuing summons.....	s. d. 0 4	s. d. 0 6	s. d. 1 3	s. d. 2 0	s. d. 3 0
Hearing an undefended cause.....	0 6	0 9	1 3	3 0	3 0
Hearing a defended cause.....	1 0	2 0	3 9	5 0	7 6
Every order or judgment, (not to be charged when the Defendant has given a confession of judgment).....	0 3	0 6	0 9	1 3	2 0
On every confession of judgement.....	0 3	0 3	0 3	0 6	0 6
CLERK'S FEES.					
Entering every account, and issuing Summons.....	0 6	0 3	1 0	1 3	1 6
Copy of Summons, particulars of demand or set-off, when not furnished by Plaintiff or Defendant, each.....	0 3	0 6	0 6	0 6	0 6
Every summons to Witness, in which any number of names may be included.....	0 3	0 3	0 3	0 3	0 3
Adjournment of any cause.....	0 3	0 6	0 9	0 9	0 9
Entering set-off or other defence requiring notice to the Plaintiff.....	0 6	0 9	1 0	1 0	1 0
Entering every judgment.....	0 6	0 6	0 9	1 0	1 0
Every search into a proceeding over a year old.....	0 6	0 6	0 6	0 6	0 6
Taking confession of judgment.....	0 6	0 6	0 6	0 9	1 0
Every Warrant, Attachment or Execution.....	0 6	1 0	1 6	1 6	1 6
To the Clerk for taking charge of and keeping the property seized, such sum as the Judge may order in each particular case.	1 3	1 3	1 3	1 3	1 3
For every copy of certificate of Judgment to another County	5 0	5 0	5 0	5 0	5 0
Deposit to be paid by party requiring Jury.....	0 6	0 9	1 0	1 6	
Entering and giving notice of Jury being required.....					
Making out Summons for the fifteen Jurors to be apportioned between and paid in the first instance by parties applying for Juries.....		2 6	2 6	5 0	5 0
THE BAILIFF'S FEES.					
Service of Summons, or other proceeding, except Subpœna, on each person.....	0 4	0 6	0 9	0 9	1 0
Service of Subpœna on each witness.....	0 4	0 4	0 4	0 4	0 4
For taking Confession of judgment.....	0 4	0 6	0 6	0 9	1 0
Drawing and attending to swear to every affidavit of service of Summons, when served out of the Division.....	1 0	1 0	1 0	1 0	1 0
Enforcing every Warrant, Execution or Attachment, against the goods or body.....	1 6	1 6	2 0	3 0	3 9
For every mile necessarily travelled from the Clerk's Office, to serve Summons or Subpœna, and in going to seize on execution or Attachment where money made or case settled after the levy, 4d.		0 6	0 9	1 0	1 6
For every Jury trial.....					
For carrying delinquent to prison, including all expenses and assistance, per mile, 1s.					
Every Schedule of property seized, return, including affidavit of appraisal.....		2 6	2 6	2 6	5 0
Every Bond, including affidavit of justification.....		2 6	2 6	2 6	
Every notice of sale not exceeding three, under execution, on attachment, 6d. each.					
That there be allowed to the Bailiff upon the sale of property under any execution the sum of two and a half per cent upon the amount realised, and not to apply to any overplus on the said execution.					

DIVISION COURT3 ACT.

SCHEDULE B.

FORM OF SUMMONS.

Schedule B.

Between { A. B., Plaintiff,
and
C. D., Defendant.

To C. D., the above named Defendant.

You are hereby summoned to be and appear at the next sittings of the first (or, as the case may be) Division Court in and for the County of (or United Counties of as the case may be) to be holden at in the Township of

on the day of 18, to answer the above named Plaintiff for the causes set forth in the Plaintiff's statement of claim hereunto annexed, numbered, and that in the event of your not so appearing the Plaintiff may proceed to obtain judgment against you by default. Dated this day of 18,

By the Court, Clerk.

NOTICE.

Take notice that if the Defendant desires to set off any demand against the Plaintiff at the trial or hearing of the cause, notice thereof containing the particulars of such demand must be left with the Plaintiff or at his usual place of abode if living within the Division, or with the Clerk of the said Court if the Plaintiff resides without the Division, at least six days before the said trial or hearing, and that if the Plaintiff or Defendant desire to take the benefit of any Statute of Limitation or other Statute, notice thereof must be left in like manner with the said Plaintiff or the Clerk at least six days before the said trial or hearing.

(Indorsement to be made on the Summons after the service thereof.)

This Summons was served by me, X. Y., on the day of 18. X. Y.

SCHEDULE C.

COVENANT BY THE CLERK OR BAILIFF.

Schedule C.

Know all men by these presents, that we J. B., Clerk (or Bailiff, as the case may be) of the Division Court number in the County of S. S., of in the said County of, and P. M., of in the said County of

do hereby jointly and severally for ourselves, and for each of our heirs, executors and administrators, covenant and promise that J. B., Clerk (or Bailiff) of the said Division Court (as the case may be) shall duly pay over to such person or persons entitled to the same, all such moneys as he shall receive by virtue of the said office of Clerk (or Bailiff, as the case may be) and shall and will well and faithfully do and perform the duties imposed upon him as such Clerk (or Bailiff) by Law, and shall not misconduct himself in the said Office to the damage of any person being a party in any legal proceeding; nevertheless, it is hereby declared that no greater sum shall be recovered under this covenant against the several parties thereunto than as follows, that is to say:

Against the said J. B. in the whole,
Against the said S. S.
Against the said P. M.

In witness whereof, we have to these presents set our hands and

SCHEDULES.

41

seals, this day of in the year
of Our Lord one thousand eight hundred and
Signed, sealed and delivered, }
in the presence of }

SCHEDULE D.

Schedule D.

County of }

A. B. of in the County of (here state the County)
the Plaintiff (or Agent, as the case may be) maketh oath and saith that
C. D., (the debtor's name) is (or are) justly and truly indebted to (the
creditor's name) in the sum of of lawful money
of Canada, for (here state the cause of action briefly;) and this Deponent
further saith, that he hath good reason to believe, and verily doth believe,
that the said C. D. hath absconded from this Province, and hath left
personal property liable to seizure under execution for debt within the
County of ; or that the said C. D., is (or are)
about to abscond from this Province, or to leave the County of
with intent and design to defraud the said (the creditor)
of the said debt, taking away personal estate liable to seizure under ex-
ecution for debt; or that the said C. D. is concealed within the County of
to avoid being served with Process, with intent
and design to defraud the said (the creditor)
of his said debt; and this Deponent further saith, that this affidavit (or
affirmation, as the case may be,) is not made, nor the Process thereon to
be issued, from any vexatious or malicious motive whatever.

A. B.

Signature of Deponent.

Sworn (or affirmed as the case may be) before me, the
day of one thousand eight hundred and

SCHEDULE E.

Schedule E.

County of }
(here insert the County.) }

To A. B., Bailiff of the Division Court of the said County of
(or to A. B., a Constable of the County of
(as the case may be).

You are hereby commanded to attach, seize, take and safely keep all
the personal estate and effects of C. D., (naming the debtor,) an abscond-
ing, removing or concealed debtor, of what nature or kind soever, liable
to seizure under execution for debt within the County of (here name the
County) or a sufficient portion thereof to secure A. B. (here name the
creditor) for the sum of (here state the amount sworn to be due) together
with the costs of his suit thereupon, and to return this warrant with what
you shall have taken thereupon, to the Clerk of the (here state the num-
ber of the Division) Division Court of the County aforesaid forthwith: and
herein fail not.

Witness my hand and seal, the day of
18

E. F.

(L. S.)

Judge, Clerk, or Justice of the Peace, (as the case may be).

RULES AND FORMS

IN USE IN THE

DIVISION COURTS OF THE COUNTY OF SIMCOE,

AS APPROVED OF BY THE JUDGES.

~~~~~  
**WHEREAS** by the Forty-fourth Section of the Act passed in the Fourteenth Year of Her Majesty's Reign, entitled, "*An Act to amend and consolidate the several Acts now in force regulating the Practice of Division Courts in Upper Canada, and to extend the Jurisdiction thereof*," it is provided that the Judge of the County Court shall have power, from time to time, to make General Rules for regulating the Practice and Proceedings of the Division Courts, and also to frame Forms for every Proceeding in the said Courts for which he shall think it necessary that a Form should be provided, and also to alter all or any Forms given in the Schedule to the said Act. In pursuance of such powers, therefore, the Judge of the County Court of the County of Simcoe doth order that the following be the *Rules of Practice and Forms for the Division Courts*, in and for the County of Simcoe, to come into force on the Tenth day of January, one thousand eight hundred and fifty-one.

**1ST RULE.**—The Clerk of every Division Court shall have an Office at such place, within the Division for which he is Clerk, as the Judge shall direct.

**2ND RULE.**—Three Books shall be kept by each Clerk, and the necessary entries be fairly made therein, namely: A Book to be called the "Procedure Book," in which shall be entered a Note of all Summonses issued, and of all Orders, Judgments, Decrees, Warrants, Executions and Returns thereto, and of all other Proceedings in every Cause, and at every Court; A Book to be called the "Cash Book," in which shall be entered an Account of all Suitor's Moneys paid into and out of Court; and a Book to be called the "Fee Fund Book," in which shall be entered an Account of all Fees, Fines, Forfeited Fees, and of all Moneys payable or paid into Court belonging to the General Fee Fund of the Division Courts,—which Books shall be according to the Forms given in the Schedule to these Rules appended, and kept as nearly as may be in the manner shown in the Forms.

**3RD RULE.**—Every account or demand entered for suit must be written in a legible manner, and show the names in full, and the last known places of abode of the parties, and be delivered to the Clerk at his Office.

**4TH RULE.**—The account or demand entered for suit shall, in every case admitting thereof, show the particulars in detail, and in other cases shall contain a statement of the particulars of the demand, or the facts constituting the cause of action, in ordinary and concise language, and the sum or sums of money claimed in respect thereto—The Forms Nos. IV, V, and VI, in the Schedule, are given by way of illustration—Provided always, that in all cases the Judge, in his discretion and on such terms as he may think fit, may adjourn the hearing of the cause for a statement of particulars, or further particulars.

**5TH RULE.**—The Clerk shall number every demand or account in the order in which it is received by him. The numbering to show the standing of the suit, as well with reference to the causes entered for trial at the then next Sittings of the Court, as in respect to the whole number of suits entered in the Court for the then current year.

**6TH RULE.**—The ordinary summons or demand on account shall be issued, according to the Form No. I, in the Schedule to these Rules appended, in lieu of the Form given in the Schedule to the Act; and every summons shall be numbered to correspond with the demand on which it issues, and dated as of the day on which it actually issues.

**7TH RULE.**—Where the Plaintiff sues under the XC Section of the Act, the proceedings shall be the same as in ordinary cases, but in addition to the usual notice on the original summons to appear, there shall be added the following:—"The Defendant is informed and cautioned that (the original Defendant) has no power to discharge this suit without the consent of the Plaintiff, or the Judge, the subject matter of this suit having been seized under execution."

**8TH RULE.**—The Clerk shall annex to the original summons the account or demand entered with him, according to Rule No. III, and to each copy of summons to be served shall be likewise annexed a copy of such account or demand, sealed or stamped with the seal of the Court.

**9TH RULE.**—Every summons must be served ten days before the holding of the Court at which it is returnable (neither the day of service nor the day of holding the Court to be

counted,) except when otherwise directed by the said Act. And where any summons has not been served, another summons, or successive summonses, may be issued.

10TH RULE.—The Bailiff who serves a copy of summons shall endorse on the original the time and the manner of the service thereof, and sign such endorsement four days before the holding of the Court at which the summons is returnable.

11TH RULE.—Where summons or other process is required to be served out of the Division of the Court from which the same issues, the papers may be transmitted by Mail, by the Clerk issuing same (on receiving the necessary postage) to the Clerk of the Division where the same requires to be served. And such last mentioned Clerk shall forthwith deliver such summons, or other process to the Bailiff of his Division to be executed—And on return thereof made, transmit the papers by Mail, with the necessary affidavit of service, if effected, to the first mentioned Clerk.

12TH RULE.—Where the Defendant desires to avail himself of the law of set off, the Statute of Limitations, or any other defence requiring notice to the Plaintiff under the XLIII Section, the Forms of Notice Nos. VII and VIII in the Schedule may be used, to be served in manner directed by the Act: Provided always, that where such Notice shall not have been given, the Judge in his discretion, and on such terms as he shall think fit, may adjourn the hearing of the cause to enable the Defendant to give such Notice, such number of days (being at least six) before the day to which the hearing may be adjourned, as the Judge may think proper.

13TH RULE.—[Not approved.]

14TH RULE.—With a view to save unnecessary expense in proof, the Defendant (or Plaintiff) shall be at liberty to give the Plaintiff (or Defendant) a Notice, in writing, that he will admit on the trial of the cause any part of the claim or set off, or any facts which would otherwise require proof; and after such Notice given the Plaintiff (or the Defendant) shall not be allowed any expense incurred for the purpose of such proof. The Notice to be according to Form No. XI in the Schedule, or to the like effect, and served on the Plaintiff (or Defendant) or left at his usual place of abode, at least six days before the trial or hearing.

15TH RULE.—Every confession, or acknowledgement of debt, taken before suit commenced, must show the particulars of the claim or demand for which it is given with the same fullness and certainty as would be required if such claim or demand was sued on in the ordinary manner, and unless application for Judgment on such confession shall be made to the Judge, at the Sittings of the Court next after the same is taken, no execution shall be issued on the Judgment rendered, without an affidavit from the Plaintiff, or his Agent, that the sum confessed, or some, and what part thereof, remains justly due. And the numbering of Judgments entered on such confession shall begin after the number of the last suit entered for trial at the Court; and applications for Judgment shall be made at a Court holden for the Division wherein, if the claim was sued upon, suit would be triable.

16TH RULE.—Every affidavit in any proceeding in the Court must be entitled in the cause (if a cause has been commenced) stating the Christian and Surname of the parties at length, and also that of the Deponent, and his place of abode and addition. And if an affidavit be sworn by an illiterate person, the Jurat must contain a Certificate of the Clerk, or Commissioner, administering the Oath, that the affidavit was read, in his presence, to the party making the same, and that such party seemed perfectly to understand it; and there shall be no erasure or interlineation in any Jurat, but the Judge shall not be bound to reject, as insufficient, any affidavit not complying with the above requisites, or any of them, but may, in his discretion, receive the same when the defect shall not seem to him to affect necessarily the validity of the proceedings.

17TH RULE.—Every Judgment, Order, and Decree of the Court shall be drawn up by the Clerk, according to the Form given in the Schedule, or to the like effect; and when any Order is made for the payment of any Debt, Damages, Costs, or other sum of Money, the same shall be payable at the Office of the Clerk of the Court at such periods as the Court shall order.

18TH RULE.—On application made to him in that behalf, the Judge shall determine what number of witnesses shall be allowed on taxation of Costs; the allowance for whose attendance shall be according to the scale in the Schedule, unless otherwise ordered, but in no case to exceed such scale, except the witness attends under *subpena* from the Superior Courts; and before allowing disbursements to witnesses, the Clerk shall be satisfied by the receipt of the witness, or by the affidavit of the party, or his agent, that satisfaction to the witness has been made.

19TH RULE.—Every application for a new trial shall be put in in writing, and show briefly the grounds upon which it is made, which grounds, where matters of fact, requiring proof, shall be supported by affidavit, and the application and every affidavit in support thereof, shall be delivered to the Clerk of the Court wherein the cause was tried, to be by him, on receiving the

Fees and the necessary Postage, transmitted by Mail to the Judge with a copy of the original claim, or other paper necessary to the proper understanding of the case.

**20TH RULE.**—Where an application is in the first instance refused by the Judge, the same being notified to the Clerk, the proceedings in the cause shall be continued as if no such application had been made. Where the Judge declines to hear the parties on such application, he shall notify the Clerk thereof, and the hearing shall be at the then next sittings of the Court wherein the suit is pending, and the Clerk shall forthwith issue a summons in the nature of a Rule nisi, according to the form of the Schedule, to which shall be annexed the party's application, and every affidavit in support thereof, and the same shall operate as a stay of proceedings, and a copy of such summons, to which shall be annexed a copy of the application and of every affidavit in support thereof, (such copies to be furnished by the party) shall be served on the opposite party, ten days at least before the day of hearing, and in manner directed by the Statute for the service of a notice of set off, and every copy of affidavit to be used in showing cause against such summons, shall be served on the party applying for the new trial, four clear days before the day of hearing, and in the manner directed by the Statute for the service of a notice of set off.

On the day appointed for the hearing, the Judge, on the appearance of both parties, or in default of the appearance of either party, on proof of the service of the summons, shall proceed to adjudicate upon such application, and to make such order thereupon as shall seem to him to justice to appertain, and all costs incident to the proceeding shall be costs in the cause unless the Judge shall otherwise order.

**21ST RULE.**—The ordinary judgment against executors or administrators shall be, to pay the debt, or damages, and costs, to be levied out of the goods of the deceased in their hands, and as to the costs, if there are no such goods, then to be levied out of their own goods.

**22ND RULE.**—Where the defence is, that executors or administrators have fully administered, if it be adjudged by the Court, that they have assets not administered, then a like judgment shall go, as in the above case, but only as to the goods of the deceased to the amount proved to be in their hands, and of assets *quando acciderint* as to the residue, the judgment as to the costs shall be that they be levied *de bonis testatoris si &c., et si non de bonis propriis*.

**23RD RULE.**—If the sole defence by executors or administrators be, that they have fully administered, and the judgment of the Court is for the defendants, it shall be that the amount found to be due be paid and levied out of the assets of the deceased *quando acciderint*, and the costs shall be in the discretion of the Judge, who should in no such case direct costs to be paid by the defendant, unless it shall appear to him that by the course taken in the case, the plaintiff has been left under the necessity of proving his cause of action.

**24TH RULE.**—Where judgment has been given against Executors and Administrators that the amount be levied upon the assets of the deceased *quando acciderint*, the Plaintiff may at any time proceed by summons against them, suggesting that assets have come to their hands, and the Court shall proceed and give judgment thereon, if for the Plaintiff as in Rule XXI, and if for the Defendants they shall be entitled to their costs.

**25TH RULE.**—Where judgment has been given that the debt (or damages) and costs be levied *de bonis testatoris*, and the Plaintiff complains that the Defendants have been guilty of a *devastavit*, inasmuch as no goods of the deceased are forthcoming to satisfy the execution issued, then a summons may be taken out in the form given in the Schedule, or to the like effect, and thereupon, as in ordinary cases, the Court shall proceed to the hearing and judgment, and if judgment be given against such Executors or Administrators, then it shall be that they pay the debt (or damages) and costs, to be levied *de bonis testatoris si &c., et si non de bonis propriis*.

**26TH RULE.**—Where, in an action against Executors or Administrators, the defence is, that they are not Executors or Administrators, or it is founded on some matter or thing arising since the death of the testator or intestate, *ex. gr.*,—a release to the defendants—if the judgment of the Court be against them, it shall be, that the debt (or damages) and costs be levied and paid *de bonis testatoris si &c., et si non de bonis propriis*.

**27TH RULE.**—Execution on any judgment is not to issue by or against any person not a party to that suit without a summons upon the judgment, the proceedings in which shall be the same as in ordinary cases, and where judgment has been given for or against a person deceased, his Executors or Administrators may in the same manner sue or be sued on the judgment, and the particulars, summons, judgment and execution, in such case, shall be according to the forms Nos. XXIV, XXV, XXVI, XXVII, XXVIII, in the Schedule, or to the like effect.

**28TH RULE.**—Where a party having an unsatisfied judgment or order desires to proceed under the 91st Section, he shall enter with the Clerk a copy of the judgment (or order) he proceeds on, and a note in writing according to the form No. XLI, in the Schedule, which shall be numbered by the Clerk in the order in which it shall be received, and thereupon a summons,



hearing the number thereof, shall issue, which summons shall be according to the form No. XLII, in the Schedule.

**29TH RULE.**—Every such summons for a party to appear to be examined upon oath under the 91st Section of the said Act, shall be served ten days at least before the day on which the party is required to appear to such summons; Provided always, that the service of such summons at any time before the time appointed for the appearance of such party may be deemed by the Judge, in his discretion, to be a good service, if it shall be proved to his satisfaction that such party was about to remove out of the jurisdiction of the Court.

**30TH RULE.**—When any claim shall be made to or in respect to any goods or chattels, property or security, taken in execution or attached under the process of any Court holden under the authority of the said Act by any person, not being the party against whom such process has issued, and summonses have been issued on the application of the Officer charged with the execution of such process, such summonses shall be served in such time and manner as by the said Act is directed for service of an original summons to appear; and the Claimant shall be deemed the Plaintiff, and the execution Creditor the Defendant. And the claimant shall, five clear days before the day on which the summonses are returnable, leave at the Office of the Clerk of the Court a particular of any goods or chattels, property or security, alleged to be the property of the Claimant, and the grounds of his claim set forth in ordinary and concise language, and the summonses, the particulars, and the order thereon, shall be according to the Forms Nos. XXXI, XXXII and XXXIII in the Schedule.

**31ST RULE.**—Every Bailiff levying and receiving any money by virtue of any process issued out of the Court, of which he is Bailiff, shall, within three days after the receipt thereof, pay over the same to the Clerk of the Court.

**32ND RULE.**—At every Court, and at such other times as the Judge shall require, the Bailiff shall deliver to the Clerk of the Court, a Statement or Return on Oath, pursuant to the Form in the Schedule, of what shall have been done, since his last return, under every warrant, precept, and writ of execution, which he shall have been required to execute.

**33RD RULE.**—The Returns mentioned in the last Rule shall be filed by the Clerk in his Office, and shall be open without fee to the inspection of any person interested, desirous of searching the same, and it shall be the duty of the Clerk to examine such returns, and if found correct and complete within ten days after the receipt thereof, to endorse thereon a Memorandum in the following words: "I have carefully examined the within Return, and find the same to be full, true and correct in every particular to the best of my knowledge and belief. Dated the 185 . . . day of . . . A. B., Clerk." And if such Returns be found by the Clerk to be incorrect or incomplete, he shall forthwith notify the Judge of the same, and the particulars thereof.

**34TH RULE.**—In all Actions in Division Courts against Officers and their sureties (under the 22nd Sect. of the Act) on the Officers *Security Covenant*, the particulars of the claim or demand shall be according to the Form No. VI in the Schedule; the summonses and subsequent proceedings to be the same as in ordinary cases.

**35TH RULE.**—These Rules, and the Forms in the Schedule, hereunto appended, shall be observed and used in all Courts holden under the said Act in the County of Simcoe; and in cases not expressly provided for in the said Act, or by these Rules, the General Principles of Practice in the Superior Courts of Common Law at Toronto, may be adopted and applied, at the discretion of the Judge. And with reference to Forms for Proceedings, not contained in the Schedule to these Rules appended, where practicable, the Forms prescribed in the said Schedule shall be used as guides in framing the same.

**36TH RULE.**—Wherever the singular number is used in these Rules in reference to persons or things, it shall be understood, when necessary to give full effect to the Rule, to mean several persons or things; and every word importing the masculine gender shall, in like manner when necessary, be understood to include the feminine gender.

Dated, Barrie, January the 2nd, 1851.

(Signed,)

JAMES ROBERT GOWAN,  
Judge County Court, County of Simcoe.

Toronto, 6th January, 1851.  
Approved.

Signed,

JNO. B. ROBINSON, C. J.  
J. B. MACAULAY, C. J. C. P.  
A. McLEAN, J.  
WM. H. DRAPER, J.  
R. B. SULLIVAN, J.  
ROBERT E. BURNS, J.

# SCHEDULE OF FORMS.

## I.

### SUMMONS TO APPEAR.—(Section 24.)

In the *Division Court for the County of Simcoe.*

No. of demand 1. }  
Year Number 80. }

Between A. B., Plaintiff,  
and  
C. D., Defendant.

To C. D., the above named Defendant,

You are hereby [as before (or as often before) you were] summoned to be and appear at the next Sittings of this Court to be holden at in the Township of in the said County, on the day of A. D., 185 at the hour of in the forenoon, to answer the above-named Plaintiff, in an Action on Contract, [or in an Action for Tort,] for the causes set forth in the Plaintiff's statement of claim hereunto annexed, and in the event of your not so appearing, the Plaintiff may proceed to obtain Judgment against you by default.\*

Dated this day of A. D. 185 .  
Claim, £ By the Court,

Clerk.

Costs exclusive }  
of Mileage. }

## NOTICE.

Take Notice that if the Defendant desires to set off any Demand against the Plaintiff [if the Action be for Tort omit the words in Italics] at the trial or hearing of this cause, or to take the benefit of any Statute of Limitation, or other Statute, Notice thereof in writing, and if a set off, containing the particulars of such set off [omit the words last in Italics if the Action be for Tort] must be given to the Plaintiff, or left at his usual place of abode, if living within the Division, or left with the Clerk of the said Court, if the Plaintiff reside without the Division, at least six days before the said trial or hearing.

### Endorsement on Summons after the service thereof.

This Summons was served by me on the day of A. D. 185 .  
Miles travel, A. B., Bailiff.

(Where the Plaintiff intends to proceed under the 94th Section, the following to be inserted in the Summons after the Asterisk.)

And in case you are personally served with this Summons, immediately after Judgment has been obtained against you, the Plaintiff will make application to the Court to examine you upon Oath touching the manner and circumstances under which you contracted the Debt [or incurred the damages or liability] which is the subject of this Action, and as to the means and expectations you then had, and as to the means you still have, of discharging the said Debt, [or damage or liability,] and as to the disposal you may have made of any property; and application will also be made to commit you to Gaol, under the Provisions of the Statute in such case made and provided, in which case the Judge of the Court will proceed to hear and determine such application, and make such order thereupon as he shall think fit, whether you shall be then present or not.

## II.

### SUMMONS ON A DEVASTAVIT.—(Section 80.)

In the *Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Executor of E. F., deceased,  
Defendant.

To C. D., the above named Defendant,

You are hereby [as before (or as often before) you were] summoned to be and appear at the

# SCHEDULE OF FORMS, COUNTY OF SIMCOE.

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next Sittings of this Court to be holden at \_\_\_\_\_ in the Township of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ A. D. 185 \_\_\_\_\_, at the hour of \_\_\_\_\_ in the forenoon, to answer the above named Plaintiff in an Action of Contract, for that you the Defendant have withheld and wasted divers goods and chattels which were the property of E. F. deceased, at the time of his death, and which came to the hands of you, the Defendant, as Executor of the said E. F., to be administered, whereby a certain judgment recovered against you by the Plaintiff at the Sittings of this Court, on \_\_\_\_\_ at \_\_\_\_\_ for \_\_\_\_\_ remains unsatisfied, and in the event of your not appearing, the Plaintiff may proceed to obtain Judgment against you by default.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 185 \_\_\_\_\_  
[Add Notice as in Form I.]

## III.

### AFFIDAVIT OF SERVICE OF SUMMONS OUT OF THE DIVISION, OR IN CASE OF UNAVOIDABLE ABSENCE OF BAILIFF.—(Section 88.)

In the \_\_\_\_\_ Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

E. F., Bailiff of the \_\_\_\_\_ Division Court of the said County [or of the said Court] maketh oath and saith that he did on the \_\_\_\_\_ day of \_\_\_\_\_ 185 \_\_\_\_\_, duly serve the said with a True Copy of the annexed Summons and Statement of Claim, by delivering the same personally to the said \_\_\_\_\_ [or if the service was not personal, state how and on whom served,] and that he necessarily travelled \_\_\_\_\_ Miles to make such service.

Sworn before me at \_\_\_\_\_ A. D. 185 \_\_\_\_\_ }  
this \_\_\_\_\_ day of \_\_\_\_\_ } E. F.  
Clerk \_\_\_\_\_ Division Court. }

## IV.

### PARTICULARS IN CASES ON CONTRACT.

A. B. of \_\_\_\_\_ claims of C. D., of \_\_\_\_\_ the amount of the following account [or the amount of the Note (a copy of which is underwritten) together with interest thereon.]  
A. B.

## V.

### PARTICULARS IN CASES OF TORT.

A. B., of \_\_\_\_\_ states that C. D., of \_\_\_\_\_ did on or about the \_\_\_\_\_ day of \_\_\_\_\_ 185 \_\_\_\_\_, at the Township of \_\_\_\_\_ unlawfully take one \_\_\_\_\_ the property of the said A. B., [or as the case may be, stating the Tort sued for in concise language.] The said A. B. hath sustained thereby damages to the amount of \$ \_\_\_\_\_ and claims the same of the said C. D.  
A. B.

## VI.

### PARTICULARS IN ACTIONS AGAINST A CLERK OR BAILIFF AND HIS SURETIES. (Section 22.)

A. B., of &c., claims of C. D., Clerk [or Bailiff] of the \_\_\_\_\_ Division Court for the County of \_\_\_\_\_ and of E. F. of &c., and G. H. of &c., [sureties for and parties with the said C. D., to a covenant for the due performance of the duties of his said Office] the sum of \_\_\_\_\_ for monies had and received by the said C. D., as such Clerk [or Bailiff] as aforesaid, in a certain cause in the said \_\_\_\_\_ Division Court, wherein the said A. B. was Plaintiff and one H. H. was Defendant, to and for the use of the said A. B., the payment whereof the said C. D. unduly withholds. And also [stating in like manner any other similar claim]—[or the sum of \_\_\_\_\_ for damages sustained by the said A. B. through the misconduct [or neglect] of the said C. D. in the performance of the duties of his said office, for that on the \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ (describe in ordinary language the neglect or misconduct whereby the damage was occasioned).]  
A. B.

## SCHEDULE OF FORMS,

## VII.

## NOTICE OF SET OFF.—(Section 43.)

In the *Division Court for the County of Simcoe.*  
Between A. B., Plaintiff,  
and  
C. D., Defendant.

The Plaintiff is required to take notice that the Defendant will, at the hearing of this cause, claim a set off against any Debt proved against him by the Plaintiff. The particulars of the Defendant's set off are hereunto annexed.

Dated \_\_\_\_\_

C. D.

## VIII.

## NOTICE OF DEFENCE UNDER STATUTE.—(Section 43.)

In the *Division Court for the County of Simcoe.*  
Between A. B., Plaintiff,  
and  
C. D., Defendant.

The Plaintiff is required to take notice that upon the hearing of this cause the Defendant intends to give in evidence, and insist upon the following ground of defence, namely: that the claim for which he, the Defendant, has been summoned, has been barred by the Statute of limitations, [or as the case may be.]

Dated \_\_\_\_\_ day of \_\_\_\_\_  
A. D. 185 . }

C. D.

## IX.—(Not Approved.)

## X.

## NOTICE OF ADMISSION TO SAVE UNNECESSARY EXPENSE IN PROOF.

In the *Division Court for the County of Simcoe.*  
Between A. B., Plaintiff,  
and  
C. D., Defendant.

The Plaintiff is required to take notice, that the Defendant will admit, on the trial of this cause, the first, second and third items of the Plaintiff's particulars to be correct [or the signing and endorsement of the Promissory Note sued upon (or as the case may be.)]

Dated \_\_\_\_\_ day of \_\_\_\_\_ 185 .

C. D.

N. B. This Notice may be embodied with notice of set off, or of other defence.

## XI.

## CONFESSION OF DEBT AFTER SUIT COMMENCED.—(Section 54.)

In the *Division Court for the County of Simcoe.*  
Between A. B., Plaintiff,  
and  
C. D., Defendant.

I acknowledge that I am indebted to the Plaintiff in the sum of \_\_\_\_\_ and consent that Judgment for that amount, and Costs, may be entered against me in this cause according to the practice of the Court.

Witness, \_\_\_\_\_ Dated the \_\_\_\_\_ day of \_\_\_\_\_ 185 .

C. D.

## XII.

## AFFIDAVIT OF EXECUTION OF CONFESSION.—(Section 54.)

In the *Division Court for the County of Simcoe.*  
Between A. B., Plaintiff,  
and  
C. D., Defendant.

E. F. Clerk (or Bailiff) of the

*Division Court for the said County [or of the said*

Court] maketh oath and saith that he, this deponent, did see the above Confession duly executed by the said Defendant, and that he is a subscribing witness thereto, and further that he deponent has not received, and is not to receive, anything from the Plaintiff or Defendant, or any other person [except his lawful fees] for taking such confession, and that he has no interest in the demand, sought to be recovered in this action.

Sworn before me at  
the day of 185 in }

E. F.

A Commissioner in B. R. in and for the said County [or Clerk, &c.]

## XIII.

## SUMMONS TO JURORS.—(Section 35.)

In the Division Court for the County of Simcoe.

You are hereby summoned to appear and serve as a Juror in this Court to be holden at  
on the day of 185 upon the trial of a certain cause wherein  
is Plaintiff, and is Defendant—herein fail not at your peril.  
Given under the Seal of the Court, this day of 185

To

Clerk.

## XIV.

## SUMMONS TO WITNESS.—(Section 48.)

In the Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

You are hereby required to attend at the Sittings of the said Court, to be holden at  
on the day of 185, at the hour of in the forenoon, to give evidence  
in the above cause, on behalf of the above named [and then and there to have and  
produce (state particular documents required) and all other papers relating to the said action in  
your custody, possession or power.]  
Given under the Seal of the Court, this day of 185

To

Clerk of the said Court.

## XV.

## ORDER FOR ADJOURNMENT.

In the Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.  
[here state the terms or

Ordered that the Trial of this Cause be adjourned until  
conditions of the adjournment if any.]

By the Court,

Clerk.

Dated

185

## XVI.

## JUDGMENT AGAINST DEFENDANT FOR DEBT OR DAMAGES.

In the Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

It is adjudged that the Plaintiff do recover against the Defendant Pounds Shil-  
lings and Pence. And it is Ordered, That the Defendant do pay the same, with the Costs  
of Suit, to the Clerk of the Court, within days.  
Dated 185 Judge.

E



## SCHEDULE OF FORMS,

## XVII.

## JUDGMENT FOR DEFENDANT.

*In the Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Defendant.

It is decreed that Judgment pass against the Plaintiff, and that the Defendant do recover against the Plaintiff the sum of \_\_\_\_\_ as satisfaction for his trouble in that behalf, with his costs of defence. And it is Ordered, That the Plaintiff do pay the same to the Clerk of the Court within \_\_\_\_\_ days.  
Dated 185 . Judge.

## XVIII.

## JUDGMENT FOR DEFENDANT ON SET OFF.

*In the Division of the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Defendant.

It is adjudged that the Defendant do recover against the Plaintiff \_\_\_\_\_ pounds shillings and pence, and it is ordered that the Plaintiff do pay the same, with the costs of suit to the Clerk of the Court within \_\_\_\_\_ days.  
Dated 185 . Judge.

## XIX.

## JUDGMENT OF NON-SUIT, OR DISMISS FOR WANT OF PROSECUTION.

*In the Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Defendant.

It is adjudged that a Non-Suit be entered in this cause [or that this cause be struck out of the cause list] and that the Plaintiff do pay the Defendant \_\_\_\_\_ and Costs, and it is ordered that the said sum and the Defendant's Costs of Suit be paid by the Plaintiff to the Clerk of the Court, within \_\_\_\_\_ days.  
Dated, 185 . Judge.

## XX.

## ORDINARY JUDGMENT AGAINST EXECUTORS.

*In the Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Executor of E. F., deceased,  
Defendant.

It is adjudged that the Plaintiff do recover against the Defendant, as Executor as aforesaid, the sum of \_\_\_\_\_ and his Costs of Suit \_\_\_\_\_ to be levied out of the goods of the deceased in Defendant's hands, to be administered,—failing such goods, the Costs to be levied out of Defendant's own goods. Defendant ordered to pay the said sum and costs within \_\_\_\_\_ days.  
Dated, 185 . Judge.

## XXI.

## JUDGMENT FOR PLAINTIFF ON DEVASTAVIT.

*In the Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Executor of E. F., deceased,  
Defendant.

It is adjudged that the Defendant has withheld and wasted divers goods and chattels which

# COUNTY OF SIMCOE.

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were the property of Plaintiff on      deceased, whereby a certain Judgment recovered by the Plaintiff on      in the      Division Court for the County of      for Debt and Costs remains unsatisfied. And it is Ordered, That the Defendant do pay the amount of the said Judgment so unsatisfied, with interest thereon from the date thereof, amounting to the sum of      together with the Costs of this Suit, to the Clerk of the Court, within      days.  
Dated,      185      Judge.

## XXII.

SUMMONS TO SHOW CAUSE IN APPLICATION FOR A NEW TRIAL.  
In the      Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

To      the above named }  
Plaintiff (or Defendant). }

You are hereby summoned to be and appear at the next Sittings of this Court, to be holden at      on the      day of      at the hour of      to show cause why the Judgment rendered in this Cause, at the last Sittings of this Court, and all subsequent proceedings, should not be set aside, and a New Trial ordered on grounds disclosed in the papers filed [copies whereof are hereunto annexed], and in the event of your not so appearing the      may proceed to obtain an Order for a New Trial, as of course.  
In the mean time all proceedings in this cause are stayed.  
Dated this      day of      185      By the Court,      Clerk.

Take Notice—That if you require to use any Affidavit in Showing Cause against the application for a New Trial, a copy thereof must be delivered to the said      or left at his usual place of abode, if living within the Division, or left with the Clerk of the said Court, at the said      reside without the Division, four clear days before the day of hearing.

## XXIII.

ORDER FOR NEW TRIAL.

In the      Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

It is ordered that the Judgment rendered in this cause, and all subsequent proceedings be set aside and a New Trial be had between the parties on [set out the terms or conditions, if any, on which the order is made.]  
Dated      185      Judge.

## XXIV.

ORDER FOR IMPOSITION OF FINE FOR CONTEMPT.—(Section 75.)

At the      Division Court for the County of Simcoe, holden at      on the      day of

Whereas      of      on the day and at the place aforesaid, in open Court at the Sittings of the said Court now here holden did wilfully insult      Judge [or Deputy] of the said Court, [or did in the view of the Court wilfully insult      Clerk (or Bailiff) of the said Court, during his attendance in the said Court (or did wilfully interrupt the proceedings of the said Court.)] Now the said Court doth hereby order and adjudge that the said E. F. shall pay a fine of      for such offence, to the Clerk of the Court forthwith; and in default of immediate payment of such fine that the said      be committed to the Common Gaol of the County for      days, unless such Fine, and the Costs herein, with the expense attending the commitment, be sooner paid.

Given under the Seal of the Court this      day of      A. D. 185      By the Court,      Clerk.

## SCHEDULE OF FORMS,

## XXV.

## ORDER FOR THE IMPOSITION OF A FINE ON A JUROR FOR NON-ATTENDANCE.—(Section 35.)

*In the* Division Court for the County of Simcoe, holden at in the said  
County, on the day of 185 .

Whereas it has been made appear to the Court that of was duly summoned to attend at this Court, now here holden, to serve as a Juror. And whereas the said did not appear at the said Court in obedience to the said summons. Now the said Court doth hereby order and adjudge that the said shall pay a fine of for such default, to the Clerk of the said Court on or before the day of [or forthwith.]  
By the Court,

Given under the Seal of the Court  
the day and year first above written. }

Clerk of the said Court.

## XXVI.

## ORDER FOR IMPOSITION OF PENALTY ON WITNESS.—(Section 48.)

*In the* Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

Whereas it hath been made appear to the Court that of was duly summoned to be and appear as a Witness in this Action at the Sittings of this Court, on this day and at this place, namely: On the day of 185 , at [and also to produce (as the case may be)] and that payment [or a tender of payment] of his reasonable expenses was duly made to him the said and whereas the said did not appear in obedience to the said summons [or having appeared in pursuance of the said summons did wilfully refuse to be sworn and give evidence in the said Action (or to produce such &c.)] Or whereas of being before the said Court at the Sittings thereof on at and being called upon to give evidence in the above cause did then and there wilfully refuse to be sworn and give evidence. Now the said Court doth hereby order and adjudge that the said shall pay a fine of for such neglect [or refusal,] to the Clerk of this Court, on or before the day of 185 , [or forthwith] and that the sum of part of the said Fine shall be paid by the said Clerk to the in this Action, being the party injured, by such neglect [or refusal] of the said

Given under the Seal of the Court this day of 185 .  
By the Court,

Clerk.

## XXVII.

## EXECUTION AGAINST THE GOODS OF DEFENDANT.—(Section 53.) 89.

*In the* Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

Whereas at the Sittings of the said Court holden on at , by the Judgment of the said Court, the said Plaintiff recovered against the said Defendant the sum of Pounds Shillings and Pence, for a certain Debt before that time due and owing to the said Plaintiff [or for certain damages sustained by the said Plaintiff] together with Costs of Suit in that behalf expended; which said Debt [or Damages] and Costs were ordered to be paid by the said Defendant at a day now past. And whereas the Defendant has not made such payment; these are therefore [as before (or as often before)] to command you forthwith to make and levy by distress and sale of the goods and chattels of the Defendant, whosoever the same may be found within the County of Simcoe, [except the wearing apparel and bedding of the said Defendant, or his family, and the tools or implements of his trade, if any, to the value of £5] the said Debt [or Damages] and Costs amounting together to the sum of and your lawful Fees on the execution of this precept; and also, and if necessary for that purpose, to seize and take any Money or Bank Notes, and any Cheques, Bills of Exchange, Promissory Notes, Bonds, Specialties, or Securities for Money, of the said Defendant which may be there found, or such part thereof as may be sufficient for the satisfying of this Execution, and the Costs of making and executing the same, so that you may have the said sum of

within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said Plaintiff.

Given under the seal of the said Court this                      day of                      185 .

To                      }                      Clerk.  
     Bailiff of the said Court.

Debt (or Damages) £

Costs ..... £

Execution ..... £

### XXVIII.

#### EXECUTION AGAINST GOODS OF PLAINTIFF.—(Section 83.)

*In the                      Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
     and  
     C. D., Defendant.

Whereas at the Sittings of this Court holden on                      at                      the said Plaintiff did not make proof of his demand in this cause to the satisfaction of the Court, [or did not appear to prosecute his suit] and thereupon Judgment was given in favor of the said Defendant, [or therefore this cause was struck out of the cause list] and it was ordered and adjudged by the Court that the said Plaintiff should pay the Defendant the sum of                      by way of satisfaction for his trouble and attendance in that behalf, and also his Costs by the Defendant about his suit in that behalf expended, amounting together to the sum of                      . And whereas the Plaintiff has not paid the same, these are therefore to command you forthwith to make and levy by distress and sale of the goods and chattels of the Plaintiff, wheresoever the same may be found within the County of Simcoe, [except the wearing apparel and bedding of the said Plaintiff or his family, and the tools and implements of his trade, if any, to the value of £5] the said sum of                      and your lawful Fees on the execution of this precept, and also, and if necessary for that purpose, to seize and take any Money, or Bank Notes, and any Cheques, Bills of Exchange, Promissory Notes, Bonds, Specialties or Securities for money, of the said Plaintiff which may be there found, or such part thereof as may be sufficient for the satisfying of this execution, and the Cost of executing the same, so that you may have the said sum of                      within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said Defendant.

Given under the Seal of the Court this                      day of                      185 .

To                      }                      Clerk.  
     Bailiff of the said Court.

Judgment, £

Costs..... £

Execution, £

### XXIX.

#### EXECUTION AGAINST GOODS OF TESTATOR.

*In the                      Division Court for the County of Simcoe.*

Between: A. B., Plaintiff,  
     and  
     C. D., Executor of E. F., deceased,  
     Defendant.

Whereas at a sitting of the said Court holden on                      at                      by the judgment of the said Court, the said Plaintiff recovered against the said Defendant, as Executor [or as Administrator] of E. F., deceased, the sum of                      for a certain debt before that time due, and owing to the said Plaintiff by the said E. F., in his lifetime, together with his costs of suit by the Plaintiff, in that behalf expended, and it was ordered by the Court, that the Defendant should pay the same accordingly, at a day now past, and the Defendant has not paid the same, these are therefore to command you forthwith to make and levy by distress, and sale of the goods and chattels which were the property of the said E. F., in his lifetime, in the hands of the Defendant to be administered, wheresoever the same may be found within the County of Simcoe, the said debt and the said costs amounting together to the sum of                      together with the costs of this execution, and also, and if necessary for that purpose, to seize and take any money, or Bank Notes, and any Cheques, Bills of Exchange, Promissory Notes, Bonds,

## SCHEDULE OF FORMS,

Specialties, or Securities for money, which were the property of the said E. F., in his lifetime, in the hands of the said Defendant to be administered, which may be there found, or such part thereof as may be sufficient for the satisfying of this execution, and the costs of making and executing the same, if the Defendant have so much thereof in his hands to be administered, and if he hath not so much in his hands to be administered, then that you make and levy of the proper goods, notes, and chattels, money, &c. [repeat] of the Defendant, the sum of for the costs and charges aforesaid, and the costs of this execution and levying the same, so that you may have the said moneys within thirty days after the date hereof, and pay the same over to the Clerk of the Court for the said Plaintiff.

Given under the Seal of the Court, this                      day of                      185 .  
 To                      }                      Clerk.  
                     Bailiff of the said Court }  
 Debt. ....£  
 Costs. ....£  
 Execution ....£

## XXX.

## SUMMONS TO PLAINTIFF ON INTERPLEADER.—(Section 102.)

In the                      Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
 and  
 C. D., Defendant.

Whereas                      of                      hath made a claim to certain goods [or to certain securities, or money, (as the case may be,)] which have been seized and taken in execution [or attached] under and by virtue of process issuing out of this Court, in this action, you are therefore hereby summoned and required to be and appear before the Judge of the said Court, at                      on                      at the hour of                      when the said claim will be adjudicated upon, and such order made thereupon as to the Court shall seem fit.

Given under the Seal of the Court, this                      day of                      185 .  
                                                                                                  Clerk of the said Court.

To                      the above named Plaintiff.

N. B. The claimant is called upon to give the particulars of his claim, which you may inspect on application at the office of the Clerk of the Court, five days before the day of hearing.

## XXXI.

## INTERPLEADER SUMMONS TO CLAIMANT.—(Section 102.)

In the                      Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
 and  
 C. D., Defendant.

You are hereby summoned and required to appear at a Court to be holden on                      at                      touching a claim made by you to certain goods and chattels [or monies, &c., or securities (as the case may be)] seized and taken in execution [or attached] under process issued out of this Court in this action, and in default of your then establishing such claim, the said goods and chattels will be sold [or the said monies, &c., paid and delivered over,] according to the exigency of the said process, and take notice that you are required five days before the said                      of                      to leave at the Clerk's Office a particular of the goods and chattels so claimed by you, and the ground of your claim.

Given under the Seal of the Court, this                      day of                      185 .  
                                                                                                  Clerk of the said Court.

To                      }  
 of                      }

## XXXII.

## PARTICULARS OF CLAIM ON INTERPLEADER.—(Section 102.)

In the                      Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
 and  
 C. D., Defendant.

To whom it may concern.

A. B. of                      claims as his property, the following goods and chattels [or monies, &c.]



seized and taken in execution [or attached] under process issued out of this Court in this action, as it is alleged, namely, [specify the goods and chattels or chattels or monies, &c., claimed,] and the grounds of claim are, [set forth in ordinary language, the particulars on which the claim is grounded.] and this the said A. B. will maintain and prove.

(N. B. If any action for the seizure has been commenced, state in what Court and how action stands.)

Dated this

day of

A. B.

## XXXIII.

## ORDER ON INTERPLEADER SUMMONS.—(Section 102.)

In the

Division Court for the County of Simcoe.

Between A. B., Plaintiff,

and

C. D., Defendant.

It is hereby ordered touching the claim of to certain goods and chattels [or as the case may be] seized and taken in execution [or attached] in this action which the said has been summoned to support his claim at this Court, that the said goods and chattels [or moneys, &c., or part thereof, to wit: (specifying them)] are the property of the said [or of the said defendant. (or are not the property of the said ) (as the case may be.))] and it is further ordered [add any order which the Judge shall think fit to make as to the disposal of the subject matter, &c.] that the costs of this proceeding be paid by the said to the Clerk of the Court, at his office for the use of the said on or before the day of

185 .  
Dated this

day of

185 .

Judge.

## XXXIV.

## SUMMONS ON BEHALF OF EXECUTOR TO REVIVE JUDGMENT.—(Section 73.)

In the

Division Court for the County of Simcoe.

No. of Demand 6. }  
Year No. 80. }

Between A. B., Executor of C. D., deceased,  
Plaintiff,  
and  
E. D., Defendant.

To E. D., the above named Defendant.

Whereas at the sittings of this Court [or of the late Court of Request, known as Division No. in and for the then District] held at on the above named C. D., in his lifetime obtained a Judgment against you for the payment of which Judgment, a transcript whereof is hereunto annexed, still remains unsatisfied, and the said Plaintiff, as Executor as aforesaid, claims to have his execution thereupon against you. You are therefore hereby summoned to appear at the next Sittings of this Court to be holden at on &c. at the hour of to answer to the said Plaintiff, and to show cause, if any you have, why the said Plaintiff, as Executor as aforesaid, ought not to have his execution against you to recover the said Judgment. And in the event of your not appearing, Judgment herein will be entered against you by your default.

Dated this

day of

185 .  
By the Court,

Clerk.

## XXXV.

## SUMMONS TO REVIVE JUDGMENT AS AGAINST EXECUTOR.—(Section 73.)

In the

Division Court for the County of Simcoe.

No. of Demand 7. }  
Year No. 81. }

Between A. B., Plaintiff,  
and  
C. D., Executor of E. F., deceased,  
Defendant.

Amount claimed }  
Costs exclusive of Mileage }

To C. D., the above named Defendant.

Whereas at the Sittings of this Court [or of the late Court of Requests known as Division No. in and for the then District] held at on &c., the said Plaintiff obtained a Judgment against the said E. F., in his lifetime for which Judgment, a transcript

## SCHEDULE OF FORMS,

whereof is hereunto annexed, still remains unsatisfied; and the said Plaintiff claims to have his execution thereupon against you, as Executor of the said E. F., you are therefore hereby summoned to appear at the next Sittings of this Court to be holden at \_\_\_\_\_ on \_\_\_\_\_ at the hour of \_\_\_\_\_ to answer to the said Plaintiff, and to show cause, if any you have, why the said Plaintiff ought not to have his execution against you, as Executor as aforesaid, to recover the said Judgment, to be levied of the goods and chattels which were the property of the said E. F., in his life time, in your hands to be administered. And in the event of your not appearing, judgment herein will be entered against you by your default.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

By the Court,

Clerk.

## XXXVI.

## DECREE ON BEHALF OF EXECUTOR TO REVIVE JUDGMENT.—(Section 73.)

In the

*Division Court for the County of Simcoe.*

Between A. B., Executor of C. D., deceased,  
Plaintiff,  
and  
E. D., Defendant.

It is decreed that a certain Judgment [set out the Judgment] be revived in favor of the Plaintiff, as Executor as aforesaid, against the Defendant; and it is ordered that the Defendant do pay the sum of \_\_\_\_\_ being the amount remaining unsatisfied on the said Judgment, to the Clerk of the Court within \_\_\_\_\_ days.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

Judge.

## XXXVII.

## DECREE TO REVIVE JUDGMENT AS AGAINST EXECUTOR.—(Section 73.)

In the

*Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Executor of E. F., deceased,  
Defendant.

It is decreed that a certain Judgment [set out the Judgment] be revived in favor of the Plaintiff against the Defendant, as Executor as aforesaid; and it is ordered that the Defendant do pay the sum of \_\_\_\_\_ being the amount remaining unsatisfied on the said Judgment, to the Clerk of the Court within \_\_\_\_\_ days.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

Judge.

## XXXVIII.

## EXECUTION AGAINST EXECUTOR ON DECREE TO REVIVE JUDGMENT.—(Section 73.)

In the

*Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Executor of E. F., deceased,  
Defendant.

Whereas at a Sittings of the said Court holden on &c., at \_\_\_\_\_ it was decreed that a certain Judgment [set out as in decree] should be revived in favor of the Plaintiff against the Defendant as Executor as aforesaid; and it was ordered by the said Court that the Defendant should pay the sum of \_\_\_\_\_ [being the amount remaining unsatisfied on the said Judgment] at a day now past; and the Defendant hath not paid the same. These are therefore to command you forthwith to make and levy by distress and sale of the goods and chattels which were the property of the said E. F. in his life time, in the hands of the said Defendant to be administered, wheresoever the same may be found within the County of Simcoe, the said sum of \_\_\_\_\_ together with the costs of this Execution. And also, and if necessary for that purpose, to seize and take any Money or Bank Notes, and any Cheques, Bills of Exchange, Promissory Notes, Bonds, Specialties or Securities for Money, which were the property of the said E. F. in his life time, in the hands of the said Defendant to be administered, as may be there found, or such part thereof as may be sufficient for the satisfying of this execution, and

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the costs of executing the same, so that you may have the sum of within thirty days  
after the date hereof and pay the same over to the Clerk of the Court for the said Plaintiff.  
Given under the seal of the Court this day of 185 .

By the Court,

Clerk.

To  
Decree for  
Interest ..  
Execution

XXXIX.

TRANSCRIPT OF JUDGMENT UNDER 57TH SECTION.  
In the Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

The following proceedings were had :

On the day of a summons requiring the Defendant to answer the  
Plaintiff's claim for a Debt [or for Damages] amounting to £ was issued out of this  
Court in this cause according to the Statute in that behalf, on the day of the  
said Defendant was duly served with a copy of the said summons, and of the particulars  
of the Plaintiff's claim by a Bailiff of the Court at the Sittings  
of the said Court holden on at the said cause came on to be tried, and the  
following Judgment was then and there rendered by the Court:

"It is adjudged, &c., [here copy Judgment.] On the day of a Writ of  
Execution upon the said Judgment was duly issued out of the said Court by the Clerk thereof,  
which said Writ of Execution was directed to , a Bailiff of the said Court, and com-  
manded him the said to levy the sum of of the goods and chattels of the  
said Defendant. On the day of the said returned to the Clerk  
of the Court the said Writ of Execution with a return thereon endorsed in the following words."  
[Copy Bailiff's Return.]

Pursuant to the 57th Section of the Act passed in the Fourteenth Year of Her Majesty's  
Reign, entitled: "An Act to amend and consolidate the several Acts now in force, regulating  
the Practice of Division Courts in Upper Canada, and to extend the Jurisdiction thereof," I  
Clerk of the said Division Court for the County of Simcoe, do hereby certify  
and declare that the foregoing is a faithful transcript of the Judgment and proceedings in the  
above cause as shown and as appears by the original Entries and Records of the Court.

Given under the Seal of the said Court, this day of 185 .  
Clerk.

XL.

CERTIFICATE OF JUDGMENT FOR REGISTRATION.—(Section 58.)

In the Division Court for the County of Simcoe.

I, R. B., Clerk of the said Court, do hereby certify that Judgment was rendered in the said  
Division Court, in favour of Plaintiff, against C. D. of Defendant,  
on the day of in the year of Our Lord &c., in an Action on Contract for  
Pounds Shillings and Pence, Debt, together with Costs of Suit,  
in all Pounds Shillings and Pence, which Defendant was ordered by  
the said Court to pay—[or as the Judgment may be.]

Year No. 450. }  
No. of Demand 10. }

Given under my hand and the Seal of the said Court this day of A. D. 185 .  
R. B.,  
Clerk of the said Court.

XLI.

APPLICATION FOR JUDGMENT SUMMONS.

To A. B., Clerk of the Division Court, County of Simcoe.

Be pleased to summons of &c., to answer according to the Statute in that behalf,  
F

## SCHEDULE OF FORMS,

touching the debt due me by the judgment [or order] of the  
behalf, a copy of which is hereunto annexed.

Division Court, on my

C. D., Plaintiff.

## XLII.

## SUMMONS TO DEFENDANT AFTER JUDGMENT.—(Section 91.)

In the

Division Court for the County of Simcoe.

No. of Demand 5. }  
Year No. 800. }

Between A. B., Plaintiff,  
and  
C. D., Defendant.

To C. D., the above named Defendant:

Whereas at the sittings of this Court, held at on &c., the above named Plaintiff obtained a judgment [or order] against you for the payment of which said judgment [or order] still remains unsatisfied—you are therefore hereby summoned to appear at the next sittings of this Court to be holden at on the day of at the hour of to be then and there examined by the Judge of the said Court touching your estate and effects, and the manner and circumstances under which you contracted the said debt [or incurred the damages or liability] which was the subject of the action in which the said judgment was obtained against you, and as to the means and expectations you then had, and as to the property and means you still have, of discharging the said debt [or damages, or liability,] and as to the disposal you may have made of any of your property.—And take Notice, that if you do not appear in obedience to this summons, you may, by order of this Court, be committed to the Common Gaol of the said County.

Given under the Seal of the Court, this day of  
Amount of Judgment, [or Order,]....  
Costs of this Summons.....

By the Court, Clerk.

## XLIII.

## WARRANT OF COMMITMENT IN DEFAULT OF APPEARANCE.—(Sections 92-95.)

In the

Division Court for the County of Simcoe.

No. of Demand 6. }  
Year No. 801. }

Between A. B., Plaintiff,  
and  
C. D., Defendant.

To Bailiff of the said Court, and to all Constables and Peace Officers of the County of Simcoe, and to the Gaoler of the Common Gaol of the said County.

Whereas at the Sittings of this Court, holden at on the day of the above named Plaintiff, by the Judgment of the said Court, in a certain suit wherein the Court had jurisdiction, recovered against the above named Defendant the sum of for a certain Debt before that time due and owing to the said Plaintiff [or for certain damages sustained by the said Plaintiff,] together with Costs of Suit in that behalf expended, which said Debt [or Damages] and Costs were ordered to be paid by the Defendant at a day now past. And whereas the Defendant not having made such payment, upon application of the Plaintiff, a summons was duly issued from and out of the said Court against the said Defendant, by which said summons the Defendant was required to appear at the Sittings of the said Court holden at on &c., to answer such questions as might be put to him touching [set out as in the summons]—And whereas it was duly proved on oath at the said last mentioned Sittings of the said Court, that the said Defendant was personally served with the said summons,—and whereas the said Defendant did not attend as required by such summons, or allege any sufficient cause for not so attending:—And thereupon it was ordered by the Judge of the said Court that the said Defendant should be committed for the term of days to the Common Gaol of the said County, according to the form of the Statute in that behalf; or until he should be discharged by due course of law, according to the provisions of the Act of Parliament in that behalf. These are therefore to require you, the said Bailiff, and others to take the said Defendant and to deliver him to the Gaoler of the Common Gaol of the said County.—And you, the said Gaoler, are hereby required to receive the said Defendant, and him safely to keep in the said Common Gaol

for the term of \_\_\_\_\_ days, or until he shall be sooner discharged by due course of law, according to the provision of the Act of Parliament in that behalf. For which this shall be your sufficient warrant.

Given under the Seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

Clerk of the said Court.

#### LXIV.

#### WARRANT OF COMMITMENT AFTER EXAMINATION.—(Sections 92-95.)

*In the Division Court for the County of Simcoe.*

No. of Demand 5. }  
Year No. 800. }

Between A. B., Plaintiff,  
and  
C. D., Defendant.

To \_\_\_\_\_ Bailiff of the said Court, and to all Constables and Peace Officers of the County of Simcoe, and to the Gaoler of the Common Gaol of the said County.

Whereas at the Sittings of this Court, holden at \_\_\_\_\_ on the \_\_\_\_\_ day of &c., the above named Plaintiff by the Judgment of the said Court, in a certain suit wherein the Court had jurisdiction, recovered against the above named Defendant the sum of \_\_\_\_\_ for a certain Debt before that time due and owing to the said Plaintiff [or for certain damages sustained by the said Plaintiff] together with Costs of Suit in that behalf expended,—which said Debt [or Damages] and Costs were ordered to be paid by the Defendant at a day now past.—And whereas the Defendant not having made such payment, upon application of the Plaintiff, a summons was duly issued from and out of the said Court against the said Defendant, by which said summons Defendant was required to appear at the Sittings of the said Court, holden at \_\_\_\_\_ on &c., to answer such questions as might be put to him touching [set out as in the summons].—And whereas the Defendant, having duly appeared at the said Court pursuant to the said summons, was examined touching, &c.—And whereas it appeared on examination to the satisfaction of the Judge of the said Court that [here insert the particular ground of commitment in the language used in the Statute.] C. D., the said Defendant, incurred the Debt (or liability) the subject of this action under false pretences, [or by means of fraud, or breach of trust;] and thereupon it was ordered by the said Judge that the said Defendant should be committed for the term of \_\_\_\_\_ days to the Common Gaol of the said County, according to the form of the Statute in that behalf, or until he should be discharged by due course of law, according to the provisions of the Act of Parliament in that behalf. These are therefore to require you, the said Bailiff, and others to take the said Defendant and to deliver him to the Gaoler of the Common Gaol of the said County; and you the said Gaoler are hereby required to receive the said Defendant and him safely keep in the said Common Gaol for the term of \_\_\_\_\_ days, or until he shall be sooner discharged by due course of law, according to the provisions of the Act of Parliament in that behalf. For which this shall be your sufficient warrant.

Given under the Seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

Clerk of the said Court.

#### XLV.

#### CERTIFICATE FOR DISCHARGE OF A PARTY FROM CUSTODY.—(Section 99.)

*In the Division Court for the County of Simcoe.*

No. of Demand 5. }  
Year No. 800. }

Between A. B. Plaintiff,  
and  
C. D., Defendant.

I do hereby certify that the Defendant now in your custody under warrant of commitment in this cause, has, since the issuing of the said warrant, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, paid and satisfied the debt [or damages,] for the non payment whereof, he was so committed, together with all costs and charges due and payable by him in respect thereof and the said Defendant may in respect of such warrant be forthwith discharged from and out of your custody.

Given under the Seal of the Court, this \_\_\_\_\_ day of \_\_\_\_\_ 185 .

To the Gaoler of the Common  
Gaol of the County of Simcoe. }

Clerk.



## SCHEDULE OF FORMS,

## XLVI.

## WARRANT TO LEVY FINE UPON WITNESS.—(Section 48.)

In the Division Court for the County of Simcoe.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

Whereas at the sittings of the said Court holden on at it was made appear to the Court that of was duly summoned to be and appear at the said sittings as a witness in this action [and also to produce—(as the case may be)] and that payment [or a tender of payment] of his reasonable expenses was duly made to him the said and whereas the said did not appear at the said sittings in obedience to the said summons [or having appeared in obedience to the said summons, did wilfully refuse to be sworn, and give evidence in the said action (or to produce such &c.,)] where a witness in Court refuses to give evidence, instead of the foregoing) “Whereas of being before the said Court at the sittings thereof, on at and being called upon to give evidence in the above cause did then and there wilfully refuse to be sworn and give evidence.” And thereupon it was ordered and adjudged by the said Court, that the said should pay for such neglect [or refusal] a fine of to the Clerk of the Court on or before the day of [or forthwith]. And whereas the said hath not made such payment, these are therefore [as before or as often before,] to command you forthwith to make and levy by distress and sale of the goods and chattels of the Defendant, wheresoever the same may be found within the County of Simcoe, [except the wearing apparel and bedding of the said or his family, and the tools and implements of his trade, if any, to the value of £5.] the said fine and costs amounting together to the sum of and your lawful fees on the execution of this precept, and also to seize and take any money, or Bank Notes, and any Cheques, Bills of Exchange, Promissory Notes, Bonds, Specialties or Securities for money of the said which may be then found, or such part thereof as may be sufficient for the satisfying of this execution and the costs on the same, so that you may have the said sum of within days after the date hereof, and pay the same over to the Clerk of the Court.

Given under the Seal of the Court, this day of 186 .

To Bailiff of the said Court.  
Fine.....  
Costs.....  
Execution

## XLVII.

## WARRANT OF COMMITMENT FOR CONTEMPT.—(Section 75.)

In the Division Court for the County of Simcoe.

To Bailiff of the said Court, and to all Constables and Peace Officers of the County of and to the Gaoler of the Common Gaol of the said County.

Whereas at a sitting of this Court holden on at in open Court then and there being held of did wilfully insult Judge (or Deputy Judge) of the said Court [or did in view of the said Court wilfully insult Clerk (or Bailiff) of the said Court (or did unlawfully interrupt the proceedings of the said Court)], and thereupon it was ordered and adjudged by the said Court that the said should pay a fine of for said offence, to the Clerk of the said Court, forthwith, and in default of immediate payment of such fine that the said should be committed to the Common Gaol of the County, according to the form of the Statute in such case made and provided, and whereas the said did not pay [or did refuse to pay] the said fine and the costs, amounting together to the sum of in obedience to the said order—These are therefore to require you, the said Bailiff, and others to take the said if he shall be found within the County of Simcoe, and deliver him to the said Gaoler of the Common Gaol of the County of Simcoe—and you the said Gaoler are hereby required to receive the said and him safely keep in the Common Gaol aforesaid, for the term of unless the said fine and costs, with the expenses attending the commitment, amounting together to the sum of be sooner paid.

Given under my hand and seal this day of  
Sealed with the Seal of the Court,  
Clerk [L. S.]  
of the said Court.

[L. S.]  
Judge.

## XLVIII.

## FORM OF BOND ON SEIZURE OR SALE OF PERISHABLE PROPERTY.—(Section 70.)

*In the Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Defendant.

Know all men by these presents that We, A. B., of [insert place of residence and addition] the above named Plaintiff, E. F., of &c., and G. G., of &c., are, and each of us is, jointly and severally held and firmly bound to [insert place of residence and addition] of &c., the above named Defendant, in the sum of [insert sum] of lawful money of Canada, to be paid to the said Defendant, his certain Attorney, Executors, Administrators and Assigns, for which payment well and truly to be made we bind ourselves, our Heirs, Executors and Administrators, and each and every of us binds himself, his Heirs, Executors and Administrators, firmly by these presents.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

Whereas the above named Plaintiff hath sued out of the above named Court a warrant of attachment against the goods and chattels of the above named Defendant, and hath requested that certain perishable property to wit: [specify property] belonging to the said above named Defendant, may be seized and forthwith exposed and sold under and by virtue of the said warrant of attachment [or whereas certain perishable property to wit: \_\_\_\_\_ belonging to the above named Defendant have been seized under and by virtue of a warrant of attachment issued out of the above named Court, in the above named cause, and have been duly appraised and valued at the sum of \_\_\_\_\_ and are now in the hands of the Clerk of the said Court,—and whereas the said above named Plaintiff hath requested the said Clerk to expose and sell the said goods, and chattels as perishable property] according to the form of the Statute in that behalf. Now the condition of this obligation is such, that if the said above named Plaintiff do repay to the said above named Defendant the value of the said goods and chattels, together with all costs and damages that may be incurred in consequence of the seizure and sale thereof, in case Judgment be not obtained by the Plaintiff according to the true intent of the 70th Section of the Act 13 and 14 Vic. Cap. 53, then this obligation to be void,—else to remain in full force and virtue.

Signed and Sealed in the  
presence of

A. B. [L. S.]  
E. F. [L. S.]  
G. G. [L. S.]

## XLIX.

## FORM OF BOND ON SUPERSEDEAS TO WARRANT OF ATTACHMENT.—(Section 67.)

*In the Division Court for the County of Simcoe.*

Between A. B., Plaintiff,  
and  
C. D., Defendant.

Know all men by these presents, that We, C. D., of [insert place of residence and addition] the above named Defendant, E. F., of &c., and G. G., of &c., are, and each of us is, jointly and severally held and firmly bound to [insert place of residence and addition] of &c., the above named Plaintiff, in the sum of [insert sum] of lawful money of Canada, to be paid to the said Plaintiff, his certain Attorney, Executors, Administrators and Assigns, for which payment well and truly to be paid, we bind ourselves, our Heirs, Executors and Administrators, and each and every of us binds himself, his Heirs, Executors and Administrators, firmly by these presents. Dated the \_\_\_\_\_ day of \_\_\_\_\_

Whereas the above named Plaintiff hath sued out of the said above named Court, a warrant of attachment against the goods and chattels of the said above named Defendant for the sum of [insert sum]. And under and by virtue of the said warrant of attachment certain goods and chattels of the said Defendant, to wit: [specify property seized] have been seized and attached;—And the said Defendant desires that the said warrant be superseded, and the said property so attached restored to him under the provision of the 67th Clause of the Act 13 & 14 Vic. Cap. 53. Now the condition of this obligation is such, that if the said Defendant do and shall, in the event of the claim in the said cause being proved, and Judgment being recovered thereon, as in other cases where proceedings have been commenced against the person, pay the same, or pay the value of the said property so taken and seized, as aforesaid, to the said Plaintiff, or shall pro-

## SCHEDULE OF FORMS,

duce such property whenever thereunto required to satisfy such Judgment, then this obligation to be void,—else to remain in full force and virtue.

Signed and Sealed in the  
presence of

C. D. [ ]  
E. F. [ ]  
G. G. [ ]

## L.

## ALLOWANCE TO WITNESS.—(Section 48.)

|                                          | £ | s. | d. |
|------------------------------------------|---|----|----|
| Per day.....                             | 0 | 2  | 0  |
| Traveling expenses per Mile one way..... | 0 | 0  | 6  |

[No more than 5s. to be allowed to Witness for any one day's attendance and travel.]

## LI.

## FORM OF BAILIFF'S RETURN.

Return of A. B. Bailiff of the Division Court for the County of Simcoe, made in pursuance of Rule numbered thirty-two in the Rules of Practice for the Division Courts in and for the said County, touching all Warrants, Precepts, and Writs of Execution acted on or in hand between the day of and the day of

| Number. | Style of Cause. | Nature of Process. | When Received. | Amount to be made. | Levied. | Bailiff's Charges. | Paid to Clerk. | When Paid. | REMARKS. |
|---------|-----------------|--------------------|----------------|--------------------|---------|--------------------|----------------|------------|----------|
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |
|         |                 |                    |                |                    |         |                    |                |            |          |

A. B. above named maketh Oath and saith that the foregoing Return is full, true and correct in every particular.

Sworn before me at this day of 185 . in the said County, }  
C. D., Clerk.

A. B.

## LII.

## CASH BOOK.

## RECEIPTS.

Account of Suitors' Money paid into the  
for the County of Simcoe, commencing the 1st of January, 1851.

Division Court

## PAYMENTS.

Account of Suitors' Monies paid out of the  
for the County of Simcoe, commencing the 1st of January, 1851.

Division Court

| No. | Style of Cause.                                            | When received.  | From whom received. | Amount.  | No. | Style of Cause.       | When Paid.        | To whom paid.     | Amount.  |
|-----|------------------------------------------------------------|-----------------|---------------------|----------|-----|-----------------------|-------------------|-------------------|----------|
| 36  | Doe vs. Roe.                                               | 24th Jan. 1851. | Defendant.          | £ 10 0 0 | 100 | Den vs. Fen.          | 1st of Feb. 1851. | Plaintiff.        | £ 5 10 0 |
| 100 | Den vs. Fen et al.                                         | 27th Jan. "     | Balliff.            | 5 10 0   | 153 | Thomas vs. Roe et al. | 29th April "      | Plaintiff's Atty. | 20 11 8  |
| 230 | James vs. Jones.                                           | 25th Feb. "     | Plaintiff.          | 0 13 4   | 230 | James vs. Jones.      | 29th April "      | Defendant.        | 0 19 4   |
| 153 | Thomas vs. Roe et al.                                      | 10th April "    | Wm. Roe.            | 20 11 8  |     |                       |                   |                   |          |
|     | Receipts up to 30th April .....                            |                 |                     | 37 0 0   |     |                       |                   |                   | £ 27 0 0 |
|     | Paid to Suitors as per Payment Account .....               |                 |                     | 27 0 0   |     |                       |                   |                   |          |
|     | Balance in Court 30th April, carried to next Quarter ..... |                 |                     | 10 0 0   |     |                       |                   |                   |          |
|     | To Cash Balance remaining in Court 30th April .....        |                 |                     | 10 0 0   | 337 | Johnston vs. Wilson,  | 30th Sept. 1851.  | Defendant.        | 2 7 6    |
| 337 | Johnston vs. Wilson.                                       | 3d Sept. 1851.  | from Plaintiff,     | 2 7 6    |     |                       |                   |                   |          |
|     | &c.                                                        | &c.             | &c.                 |          |     |                       |                   |                   |          |

## LIII.

## PROCEDURE BOOK.

First DIVISION COURT for the County of SIMCOE.

ENSUING SITTINGS, 26th February, 1851.

200 — Year Number.

JOHN DOE,

vs.

Number of Demand — 1

RICHARD ROE,

Town of Barrie.

Township of Vespra.

1851.

|            |                                                                                                           |
|------------|-----------------------------------------------------------------------------------------------------------|
| 10th Jany. | Received particulars of Plaintiff's Demand (on contract) for £2 and Plaintiff paid 1s. 8d. towards costs. |
| 11th,      | Issued Summons to Bailiff, costs 1s. 8d. and mileage.                                                     |
| 24th,      | Summons returned, served.                                                                                 |
| 28th,      | Defendant paid £2 1s. 8d., demand and costs.                                                              |
| 10th Feb.  | Paid Plaintiff £2 1s. 8d., demand and costs deposited.                                                    |

201 — Year Number.

JOHN DEN,

vs.

Number of Demand — 2

THOMAS FEN,

Township of Oro.

Town of Barrie.

|            |                                                                                                                                                                    |
|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 10th Jany. | Received particulars of Plaintiff's demand (for tort) for £5; Plaintiff paid on account of costs 15s., and directed two subpoenas, and gave notice to try by Jury. |
| 12th,      | Issued Summons to Bailiff, costs 5s. 9d. and mileage.                                                                                                              |
| 20th,      | Summons returned, served.                                                                                                                                          |
| 8th Feb.   | Issued Jury Summonses and Subpoenas to Bailiff.                                                                                                                    |
| 13th,      | Jury Summonses returned served, 10 miles travel, Subpoenas served also.                                                                                            |
| 20th,      | Cause tried, verdict for Plaintiff £5, Judgment thereon for same and costs, ordered to be paid in 30 days.                                                         |
| 20th March | Taxed Costs: Fee Fund 3s, Clerk 6s 3d, Bailiff 12s 4d, Jury 2s 6d, Witnesses per Affidavit 10s. = £1 14s 1d.                                                       |
| 24th,      | Defendant paid £6 14s 1d, in full of Judgment and Costs.                                                                                                           |

203 — Year Number.

JAMES JONES,

vs.

Number of Demand — 3

THOMAS THOMPSON,

Township of Innisfil.

Town of Barrie.

|            |                                                                                                                                           |
|------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| 11th Jany. | Received particulars of Plaintiff's demand (on contract) for £25, and 6s 6d on account of costs, from James Patton, Plaintiff's Attorney. |
| 12th,      | Issued Summons to Bailiff, costs 6s 6d and mileage.                                                                                       |
| 1st Feb.   | Summons returned served, 9 miles travel.                                                                                                  |
| 3rd,       | Defendant executed cognovit for £25.                                                                                                      |
| 20th,      | Judgment given for Plaintiff. £25 and costs, to be paid in 30 days.                                                                       |
| 10th March | Taxed costs: Fee Fund 6s 6d, Clerk 4s 6d, Bailiff 4s 6d, = 15s 6d.                                                                        |
| " "        | Defendant paid £25 15s 6d, Judgment and Costs.                                                                                            |

N. B.—The proceedings subsequent to Judgment may be entered and continued in another part of the "Procedure Book."